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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

16 CR 468 (GHW)

5 JAMES GRANT and JEREMY  
6 REICHBERG,

7 Defendants.

8  
9 November 6, 2018  
9:10 a.m.

10 Before:

11 HON. GREGORY H. WOODS,

12 District Judge

13  
14 APPEARANCES

15 GEOFFREY S. BERMAN

16 United States Attorney for the  
Southern District of New York

17 BY: JESSICA R. LONERGAN

KIMBERLY J. RAVENER

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18 Assistant United States Attorneys

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Attorneys for Defendant Reichberg

20 BY: SUSAN R. NECHELES

21 MERINGOLO & ASSOCIATES

Attorneys for Defendant Grant

22 BY: JOHN MERINGOLO

ANJELICA CAPPELLINO

IB6KGRA1

1 (Trial resumed)

2 THE COURT: First, thank you, all, for being here.

3 Welcome.

4 Before we begin, are there any issues that any party  
5 would like to raise with the Court? The first issue that I  
6 have on the agenda for this morning is to discuss the  
7 application related to the admissibility of the testimony of  
8 Special Agent Massey responding to the Bruton issues that were  
9 brought to my attention very, very early Friday morning and  
10 which were briefed by the government during the course of  
11 yesterday's proceedings.

12 Is there anything else that any party would like to  
13 raise before we begin?

14 Yes, counsel.

15 MR. BELL: Your Honor, in addition to the Massey and  
16 Bruton issues, we do want to raise the state of play with  
17 respect to the potential de Blasio issues, because having  
18 conferred with defense counsel, we think that they bear a  
19 little bit on openings. So we want to touch on those briefly.

20 A fourth very narrow issue is this: We expect to  
21 begin playing stipulated-in wiretapped conversations this  
22 morning, and the question we have for the Court is whether, for  
23 expediency's sake, it makes sense to leave binders beneath the  
24 jurors' seats in a sort of Oprah, "you get a car, everybody  
25 gets a car" style, or whether to hand those out later on.

IB6KGRA1

1 THE COURT: Thank you.

2 Counsel for defendants, let me ask you what your view  
3 is regarding the binders. My concern about leaving the binders  
4 early is that they will be tempted to thumb through them  
5 prematurely, but I invite the comments of the defense.

6 MS. NECHELES: Your Honor, we were planning on giving  
7 binders as well. I have no objection to that. In the past, I  
8 think that in cases that I have been in, the Court has just  
9 instructed jurors not to look ahead, and I think that the  
10 jurors follow those instructions. And sometimes you can see  
11 them not following them, and the Court has reminded jurors that  
12 they should not look ahead.

13 I will just comment on the stipulation: The  
14 stipulation does not stipulate into evidence any of the tapes.  
15 It just stipulates that they are taped and that these are  
16 transcripts of the tapes. So we will be -- I don't know if any  
17 of them will be coming up today, but there are some tapes that  
18 we will be objecting to that the government has said they  
19 wanted to introduce. We'll be objecting to them as hearsay  
20 statements by noncoconspirators.

21 THE COURT: Thank you.

22 Please proceed.

23 MR. BELL: What we may do, your Honor, is try to, at  
24 least on a going-forward basis, flag for the defense sometime  
25 before what wire calls we intend to play on a given day, so

IB6KGRA1

1 that we can nip the bud on any potential objections before it  
2 takes up the jury's time. We'll try to give them a list  
3 forthwith, so we can deal with that today as we go.

4 The related question, I suppose, tied into that first  
5 question is whether your Honor, as is I think generally okay  
6 with most judges in this district, is all right with playing  
7 admitted wiretapped conversations for the jury; that is,  
8 publishing them without a witness actually on the stand. A  
9 number of the tapes are in just for what the tapes say --  
10 there's not much that a witness would add -- and it allows us  
11 to, I think, sprinkle those in liberally throughout the  
12 presentation without, essentially, numbing the jury with a  
13 whole bunch of tapes all at once. But we wanted to clear that  
14 procedure with your Honor since we realize that not every judge  
15 in the district is of the same mind on that.

16 THE COURT: Thank you.

17 Have the parties agreed as to the admissibility of  
18 those recordings?

19 MR. BELL: Not as yet, your Honor. I think that what  
20 we would try to do is resolve issues beforehand, including even  
21 the night before or the day of before your Honor to the extent  
22 things are disputed. Once they are agreed to, the hope would  
23 be to be able to play them in the fashion I described.

24 THE COURT: Thank you.

25 Counsel for defendants?

IB6KGRA1

1 MS. NECHELES: We have no objection. We have asked  
2 that the entire transcripts, or at least what we have noted,  
3 that the entire tapes be played at the same time. And we  
4 would, of course, be doing the same on cross or when we're  
5 cross-examining, playing transcripts or playing them in our  
6 direct case, also, and would be informing the government in the  
7 morning of what tapes we will be playing.

8 MR. BELL: We do not intend to chop up in any way the  
9 tapes as they have been -- as the transcripts have been given  
10 to the defense and to the Court and the accompanying T  
11 exhibits. So that's all fine by us.

12 THE COURT: Fine. Thank you.

13 I have no concerns about either set of parties playing  
14 tapes that the parties agree are properly admitted into  
15 evidence without a witness on the stand. You'll need to  
16 establish that predicate, however.

17 MS. NECHELES: Your Honor, there's another issue I  
18 wanted to raise.

19 THE COURT: Please.

20 MS. NECHELES: Maybe it's just on the list. I don't  
21 know what order your Honor wants to deal with this.

22 Your Honor had ruled that the government could put in  
23 two rules from the police guide, the patrol guide, and now the  
24 government has marked as exhibits many, many, many more rules,  
25 rules about not lying, rules about what kind of conduct there

IB6KGRA1

1 has to be at parades, all sorts of rules, and I would submit  
2 that it goes way beyond your Honor's ruling, what was  
3 admissible, and that it is unduly prejudicial. It will cause  
4 confusion with the jury. They are clearly intending to argue  
5 that the police officers were doing things wrong because they  
6 were not complying with police department rules.

7           So we would ask to preclude any rules beyond that  
8 which were not raised with your Honor in the motions in limine  
9 that your Honor spent a lot of time with. I would say I do  
10 understand that there is one rule with respect to desk  
11 appearance tickets, which is a process in state court, that  
12 either someone can go through the whole system, get arrested,  
13 go through the whole system, or they can be given a desk  
14 appearance ticket, which is for misdemeanors and violations and  
15 saves the government a lot of money and a lot of time, and  
16 there are rules about when that can be done. And I understand  
17 that they will be putting those rules in, and I understand why,  
18 because there is an issue with respect to whether people --  
19 whether Jeremy Reichberg got police officers to do something  
20 that violated the rules. But other than that, I believe that  
21 the other rules, which are, for example, rules about parades,  
22 rules about performance on duty general, prohibited conduct,  
23 making false statements, public conduct, prohibited conduct --  
24 those rules, your Honor, I submit, should all be precluded.

25           THE COURT: Thank you. Good.

IB6KGRA1

1 Counsel for the United States, any response?

2 MS. LONERGAN: Yes, your Honor. When we briefed the  
3 patrol guide issue a number of months back, I'm fairly certain  
4 that we, in the motion, focused on -- I think Ms. Necheles is  
5 right -- two specific rules, but reserved the right to offer  
6 additional ones. And I remember that it led to a series of  
7 litigation about the fact that defense counsel wanted us to  
8 provide them with the entire patrol guide. It was difficult to  
9 do, but we nevertheless did it. And part of the reason they  
10 said they wanted the entire patrol guide was to go through and  
11 look at whether they wanted to offer various rules.

12 Yes, it is true that we have identified additional  
13 portions of the patrol guide, but they all go to the same core  
14 issue that this Court has already ruled is permissible, which  
15 is to show that there were, and are, guides of conduct for  
16 police officers in the patrol guide that Grant and other  
17 officers in this case, that their conduct violated the patrol  
18 guide, and that that goes to their state of mind or their  
19 intent in committing the crime at issue.

20 We were very, very clear that any admission of the  
21 patrol guide in evidence in this trial would require a very  
22 particular limiting instruction, which I think we had worked on  
23 with the Court. We are happy for the Court to give that  
24 limiting instruction whenever a portion of the patrol guide  
25 comes into evidence, after all the portions of the patrol guide

IB6KGRA1

1 come into evidence, in the Court's charge to the jury. We are  
2 not going to be arguing in any sense that a violation of the  
3 patrol guide is the crime in this case, but as our case has  
4 developed over the past six months, we have found that there  
5 are additional portions of the patrol guide that match up with  
6 the conduct charged in this case and that match up with  
7 testimony. In particular, many of the portions may come in  
8 through another witness who the Court has ruled is relevant and  
9 admissible on this purpose, which is Sergeant Cox, who will  
10 talk about training at the academy. And as part of his  
11 training, he will talk about police science, and as part of  
12 police science, new recruits are taught about, essentially,  
13 much of the patrol guide. And so that is the context in which  
14 we are offering these sections. Most of these sections of the  
15 patrol guide is what are the rules that police officers  
16 understand guide their conduct.

17 Again, yes, we agree that we have expanded the number  
18 of sections, but it is still probably less than a dozen  
19 sections, and they all go to the similar point that we  
20 initially raised with the Court six months ago.

21 THE COURT: Thank you. Fine.

22 Counselor, is there any other issue that -- I'll come  
23 back to this issue. Is there any other issue that we should  
24 talk about that will affect, potentially, the parties' opening  
25 statements? I'd like to hear about what counsel for the United

IB6KGRA1

1 States has referred to as the de Blasio issue before we turn to  
2 the Bruton issue.

3 MR. BELL: I don't think there is another issue, your  
4 Honor. I will merely note that I just handed counsel for both  
5 defendants a list of wired calls that we intend to play today,  
6 I have another list for the Court if it's helpful, but we may  
7 not need to start our court exhibit count quite that quickly if  
8 there aren't any objections.

9 THE COURT: Thank you.

10 What did the parties resolve with respect to the  
11 government's proposal regarding proposed limitations on the  
12 testimony of Mr. Rechnitz regarding his and Mr. Reichberg's  
13 alleged bribery of public officials?

14 MR. BELL: Your Honor, we discussed this with counsel  
15 for both defendants, and it seems that we were able to get  
16 sign-on from one, but not both defendants. So, unfortunately,  
17 we don't have a resolution. What we would propose, your Honor,  
18 and thus tee up for a ruling, is that within the realm of a 403  
19 calculus that your Honor mentioned that this is situated in, we  
20 would move for the following: Essentially for your Honor to  
21 endorse that proposal even if one of the parties is not, which  
22 is to say, we will excise from the case -- and we would ask the  
23 Court to excise from the case -- the de Blasio quid pro quo  
24 activity. And I am being precise with that because there are  
25 more benign ways in which Mr. De Blasio may be a part of the

IB6KGRA1

1 case, such as the email conduct that Mr. Meringolo made  
2 reference to late yesterday, but we would propose that that be  
3 excised, that as part of that excision, that Mr. Rechnitz not  
4 be cross-examined concerning the quid pro quo activities  
5 involving Mr. De Blasio and the de Blasio campaign. And that,  
6 in light of that, it would -- we would also, of course, your  
7 Honor, seek permission to redact the cooperation agreement of  
8 Mr. Rechnitz accordingly, and as part of that, we would like  
9 to, at the very least, make sure that the parties do not open  
10 on something that would be -- that would not ultimately  
11 materialize in the case as, presumably, under the 403 calculus  
12 that your Honor alluded to earlier. Not only Mr. de Blasio,  
13 but, presumably, Mr. Offinger would no longer have admissible  
14 testimony to offer.

15 THE COURT: Thank you.

16 So, as I understand it, the proposal is that  
17 Mr. Rechnitz will not testify that he or Mr. Reichberg engaged  
18 in what you've described as the de Blasio quid pro quo  
19 activity, so that's something that would not be part of the  
20 case as to either Rechnitz or Mr. Reichberg?

21 MR. BELL: That's correct, your Honor.

22 There is a part of the story in which I think  
23 Mr. Rechnitz would testify that he raised money for  
24 Mr. de Blasio. He would not discuss, I believe, under this  
25 proposal, anything that he solicited or expected in return.

IB6KGRA1

1           There is, I suppose, a peripheral, but related matter  
2 of a portion of Mr. Rechnitz's Giglio that concerns straw  
3 donation activity that he took part in, and I think your Honor  
4 is familiar with it, but I don't think we need to clarify the  
5 sort of ragged edges of that ruling right now, not for purposes  
6 of openings. I think the heart of this would be that the  
7 quid pro quo stuff, at its core, the "I am giving to the  
8 de Blasio campaign with the expectation of action from the city  
9 in return," would be out on all fours.

10           THE COURT: Thank you.

11           Let me just ask one question, counsel: With respect  
12 to the evidence that would come in regarding the fact of  
13 political donations; i.e., Rechnitz made political donations as  
14 part of the campaign, the defense had requested earlier that to  
15 the extent that that comes in, that I instruct the jurors  
16 generally that campaign contributions, in and of themselves,  
17 are not illegal. What's your view regarding such an additional  
18 comment?

19           I should say that was two versions ago of the  
20 defendants' position on this issue, but what's your view  
21 regarding such a potential instruction, given the excision of  
22 the quid pro quo aspect?

23           MR. BELL: Can you give us a moment to confer, please?

24           THE COURT: Please. Take your time.

25           MS. NECHELES: Can I comment on this, your Honor?

IB6KGRA1

1 THE COURT: Thank you. Give the government just one  
2 moment, so we keep our thread intact.

3 MR. BELL: Your Honor, with respect to Mr. Rechnitz's  
4 bundling -- and Mr. Rechnitz, I should say, and Mr. Reichberg's  
5 bundling donations for the mayor, that activity on its own is  
6 obviously not illegal, and so such an instruction would be  
7 accurate, although I don't believe that it would necessarily be  
8 required or necessary. I think that people tend to get that  
9 raising money, engaging in the campaign fundraising process, is  
10 not itself a violation of law. Any such instruction, of  
11 course, would not, presumably, apply to the straw donation  
12 component of this, because utilizing straw donations is, among  
13 other things, a violation of New York's election law.

14 So obviously we would need to be cautious with that  
15 insofar as that still is part of Mr. Rechnitz's Giglio.

16 THE COURT: Thank you.

17 Can I ask about that?

18 MR. BELL: Sure.

19 THE COURT: Why, as part of the government's proposal,  
20 is that set of straw donations still something that the  
21 government wants to put in front of the jury?

22 MR. BELL: I think that we've cut around that largely  
23 because the driver of this conversation was Ms. Necheles'  
24 raising the issue -- which we don't credit, but Ms. Necheles'  
25 raising the issue that she did not believe that the actual

IB6KGRA1

1 quid pro quo activity was a violation of the law. The  
2 fundraising -- the straw donation activity is a violation of  
3 the law. If what you're proposing is that we excise the straw  
4 donation activity as well, then I'd ask a moment to just confer  
5 with my colleagues about that.

6 THE COURT: Thank you.

7 To be clear, I'm not proposing anything; I'm just  
8 inquiring. The reason why I inquire is, in part, because one  
9 of the issues that came up as part of our discussion of the 403  
10 balancing analysis was whether if the government puts in  
11 evidence that Mr. Rechnitz committed crimes with Mr. Reichberg,  
12 the defendants will, therefore, need to/be entitled to put in  
13 evidence that that conduct was not illegal or that it did not  
14 occur.

15 MR. BELL: That's true, your Honor. But, certainly,  
16 the straw donation activity would not be alone in that category  
17 of activity that remains. Reichberg and Grant -- I should say  
18 attorneys for Reichberg have not taken the same exception to  
19 any number of presumably illegal things that the two are  
20 alleged to have participated in together -- the Seabrook  
21 activity, the Astorino political quid pro quo, Mr. Reichberg's  
22 paying to -- presumably paying to get people out of jury duty,  
23 and Mr. Rechnitz's referring people to him for that purpose.

24 So the purpose here wasn't to excise every possible  
25 such issue, because I don't think that attorneys for Reichberg

IB6KGRA1

1 have raised issue with every possible such issue.

2 THE COURT: Thank you. Good. That's helpful.

3 Counsel for Mr. Reichberg, can I hear from you,  
4 please?

5 MS. NECHELES: So, your Honor, part of my problem in  
6 dealing --

7 THE COURT: Can I ask you to move closer to the  
8 microphone, if you wouldn't mind?

9 MS. NECHELES: Sure.

10 Part of my problem in dealing with all of this is that  
11 the government did not communicate with me about what the scope  
12 of this is. I was in my office until very late last night. I  
13 didn't hear from them about what the scope of this, what they  
14 are proposing to leave out. So I don't know. And if any of  
15 the mayor stuff is coming in, it's all coming in from my  
16 perspective.

17 THE COURT: Thank you.

18 MS. NECHELES: And so because of that, I need to open  
19 on it, because I cannot be seen by the jury as having gotten up  
20 there, and talked about one thing, and be hiding from this  
21 other evidence that's going to be coming in to court. The  
22 government has never said I'm not putting in --

23 THE COURT: Thank you. Let me just pause you, if you  
24 don't mind.

25 I appreciate the concern, the phrases that we're

IB6KGRA1

1 using, the government said the de Blasio -- quote, the  
2 de Blasio, quote, quid pro quo activity, and you've referred to  
3 it as the mayor stuff, and we know that there is also the  
4 question of the emails that I had confused on my part  
5 conversation with Mr. Meringolo about yesterday, just because I  
6 don't know the facts as well as all of you do. I think it is  
7 very important for us all to be speaking about the same set of  
8 language, so mayor stuff and de Blasio quid pro quo activity  
9 may not be sufficiently precise for these purposes.

10 MS. NECHELES: So, for example, your Honor, there will  
11 be evidence in this case that --

12 THE COURT: Oh, can I ask, Ms. Necheles, if this would  
13 be reasonable for you: Can I ask the government to tell me  
14 what they mean by the de Blasio quid pro quo activity that they  
15 propose to --

16 MS. NECHELES: Sure.

17 THE COURT: -- excise?

18 MS. NECHELES: And can I ask you, your Honor, if we  
19 could just hear, what de Blasio stuff, or stuff was City Hall,  
20 or getting favors for City Hall, what do they intend to put  
21 into evidence? What will they be putting into evidence as  
22 people contacting de Blasio or trying to get favors from  
23 de Blasio? Because it's all part of one thing.

24 MR. BELL: Sure.

25 I think that the last question Ms. Necheles asked is

IB6KGRA1

1 relatively easy to answer. That stuff would all be out. But  
2 let's begin from your Honor's question.

3 Your Honor asked us to define what the de Blasio  
4 quid pro quo will be. Here, we are talking about testimony  
5 from Mr. Rechnitz that he, Mr. Reichberg, and another  
6 individual met with the mayor's chief fundraiser, Ross  
7 Offinger, and offered to bundle money for the 2013 mayoral  
8 campaign, and in that conversation, made it clear that those  
9 fundraising and donation efforts were premised on Mr. de Blasio  
10 and the future de Blasio City Hall being responsive with action  
11 to their requests in return.

12 Also excised as part of this would be whatever efforts  
13 Mr. Rechnitz made in order to get actions pursuant to that  
14 understanding once Mayor de Blasio was elected and  
15 Mr. Rechnitz's knowledge of what efforts Mr. Reichberg made to  
16 get action from City Hall pursuant to that same understanding.

17 Given the categorical nature of the testimony being  
18 excised, I'm actually not sure that there is a need to go into  
19 what precisely Mr. Rechnitz says that he would have gotten  
20 pursuant to that understanding because it would be excised.

21 THE COURT: Thank you.

22 Counsel for defendants, any questions from you  
23 regarding what it is that the government is offering here?

24 MS. NECHELES: So, your Honor, yes, because later in  
25 the case, when we start talking about favors for the police --

IB6KGRA1

1 I mean, for example, the government has on its exhibit list  
2 emails to de Blasio about Banks, and Banks be made the chief of  
3 the police, and there are conversations where there is  
4 reference to, you know, we're going to ask de Blasio for calls.  
5 So is that coming into the case.

6 In addition, your Honor, we intend to show that  
7 Rechnitz's lying about the favors that he got from de Blasio,  
8 and that none of this was as a bribe scheme, and that is  
9 relevant as to the Astorino. That is how we are showing the  
10 Astorino stuff is not relevant. So if the Astorino bribe,  
11 supposed bribe, stuff is coming in, we have to show that this  
12 is all part of how Rechnitz deals with the world. Rechnitz is  
13 the one giving hundreds of thousands of dollars, literally over  
14 a hundred thousand dollars, to Mayor de Blasio, and Reichberg  
15 is giving zero. And that evidence -- and that's the same  
16 pattern that is true for Astorino. So I need to show that, if  
17 the Astorino stuff is coming in, that this is just the pattern  
18 of how Rechnitz behaved. He has a pattern of activity in his  
19 life of throwing around money, and that will be a lot of our  
20 proof, that nobody thinks that this is bribes, because that's  
21 how he acts all the time. He's always throwing around money,  
22 everybody sees it, he's not getting any results on anything, so  
23 nobody would think that what he is doing is bribes.

24 I cannot deal with the Astorino stuff without also  
25 dealing with how he has a pattern in his entire life of

IB6KGRA1

1 throwing around money for political contributions, massive  
2 amount of monies, not connected to anything.

3 So when the government says, well, we didn't object to  
4 the Astorino stuff, we didn't -- we did object to it, your  
5 Honor ruled on it, we've moved on like we're supposed to do.  
6 We did object to all of this other-act evidence coming in, but  
7 I certainly don't understand how Astorino comes in if the mayor  
8 stuff is staying out, and I also don't understand the state of  
9 mind relevant or what the 404(b) purpose is for evidence about  
10 straw donors. That does not at all seem to go to the purposes  
11 that the government was talking about before to show it was a  
12 pattern of activity. So that's our problem. It's all  
13 intertwined in that way.

14 If all of this were being kept out, then it would be a  
15 clean case, and we could deal with it that way, but that's not  
16 at all what the government is proposing.

17 THE COURT: Thank you. Understood.

18 Counsel for Mr. Grant, do you have any comments on  
19 this issue?

20 MR. MERINGOLO: We would not consent to exclude  
21 anything whatsoever with Mayor de Blasio. We want to open on  
22 it, we want to close on it, we want to cross on it, we want to  
23 put witnesses on it. Mr. Rehnitz pled guilty to bribing  
24 de Blasio pursuant to a cooperation agreement with the best  
25 U.S. Attorneys in the country. We can't just make that go

IB6KGRA1

1 away.

2 THE COURT: Thank you.

3 Counsel for the United States, I'd like to ask you to  
4 respond to this, but I'd also like to hear a comment on what I  
5 remember as one of the quotes presented to me in the  
6 submissions. And I apologize, I'm going to paraphrase this  
7 statement inaccurately from Mr. Rechnitz's prior testimony.  
8 The essence of that testimony was, if I recall correctly,  
9 first, NYPD, then the city, then the world -- I don't think  
10 "the world" was in there -- but how would excising this set of  
11 testimony affect such testimony from Mr. Rechnitz about what  
12 I'll call the long-term plan, which I had understood the  
13 government to want to introduce, in part, to contradict what I  
14 expect to be the defendants' arguments -- what have been the  
15 defendants' arguments here that this was just action to protect  
16 a particular community?

17 MR. BELL: Your Honor appreciates the contemplated  
18 import of that testimony correctly. And, to be clear, we  
19 believe that there are other somewhat vaguer, frankly, ways to  
20 get at the same sentiment. We lose some of the power of that  
21 statement, your Honor, that is true. That is a sacrifice that  
22 we were willing to make in the spirit of compromise and in the  
23 spirit of avoiding the potential 403 sideshow related to the  
24 mayor's Office.

25 But as far as how that statement might come in,

IB6KGRA1

1 whether there is a quid pro quo aspect to it or not, it is  
2 clear that, through a combination of -- I'll back up.

3 In 2013, Mr. Rechnitz and Mr. Reichberg entered the  
4 political realm. I expect Mr. Rechnitz's testimony to be that  
5 before they set their sights on Mayor de Blasio, they bet on  
6 mother mayoral candidate, Bill Thompson, and lost. I do not  
7 understand there to be any illegal quid pro quo aspect to their  
8 involvement in the Thompson campaign. But they will say, at  
9 that point, that they did want to get to a place where they  
10 could get in good with City Hall, ambiguously, and they wanted  
11 to get in good with politicians generally, and they had a  
12 general understanding, the two of them and the third person who  
13 they dealt with as part of their team, that they just wanted to  
14 generally become big shots, so that they could do big-shot  
15 things.

16 So, in a not necessarily illegal way, that was of a  
17 piece with the clearly illegal behavior concerning the police.

18 I'll say, your Honor, with respect to Ms. Necheles'  
19 earlier points, the following:

20 One, with respect to the straw donations, I actually  
21 don't think it's that hard to excise the quid pro quo component  
22 of this and maintain the straw donations, but if your Honor  
23 wants to rule out the straw donations on a similar 403  
24 calculus, we're not going to fight it that hard. These are the  
25 types of calls, as I mentioned before, that can be made at the

IB6KGRA1

1 margins of a ruling by your Honor, that the de Blasio  
2 quid pro quo activity, as I defined it before, comes out for  
3 403 reasons. And, your Honor, we would happily abide by that  
4 ruling if it simplifies the world.

5 With respect to Rob Astorino, Ms. Necheles has  
6 suggested that there is not a way for Mr. Rechnitz to testify  
7 about their Astorino activities without talking about their  
8 de Blasio activities. I don't think that that's been supported  
9 by the argument that's been presented to your Honor so far.

10 The concern here is fundamentally one of whether we  
11 are going to tee up issues that prompt the spectacle of  
12 bringing the current mayor of New York, or his chief  
13 fundraiser, in here to testify. The Astorino issue doesn't  
14 implicate all of that. Mr. Astorino is no longer in office.  
15 And there is no reason why, in testifying that they talked to  
16 Rob Astorino about raising money and getting a chaplain seize  
17 in return, that it necessarily has to implicate this whole long  
18 laundry list of things involving the mayor.

19 THE COURT: Good. Thank you. Understood.

20 Let me say the following about the de Blasio issue --  
21 and I'm sorry, counsel for the United States, I want to ask one  
22 other question -- what I've heard is, as I understand it, and  
23 counsel for defendants will correct me, is that neither  
24 defendant endorses this approach. I had understood from your  
25 introductory remarks that one of the defendants had endorsed

IB6KGRA1

1 it. I just wanted to come back to make sure that I'm  
2 appreciating the positions of the parties.

3 My understanding is that both defendants disagree with  
4 this proposal.

5 MR. BELL: That's what we understand, having heard  
6 argument this morning, your Honor. I think that Defendant  
7 Reichberg has been something of a moving target on that in a  
8 fashion that might inspire some fondness from, say,  
9 Schrodinger, but we understand there to be an opposition from  
10 both defendants at this point, and we think that your Honor  
11 should craft a ruling that resolves this over that objection  
12 from a 403 standpoint. It's the right thing to do.

13 THE COURT: Thank you. Fine.

14 MS. NECHELES: Your Honor?

15 THE COURT: I'm not going to impose that constraint on  
16 the case at this point under the rubric of Rule 403. I've  
17 heard from both defendants that they believe that that  
18 constraint on the scope of Mr. Rechnitz's testimony would  
19 adversely affect their ability to impeach his credibility and  
20 to attack the evidence that's being introduced through him, not  
21 only with respect to what we've described here as the Mayor  
22 de Blasio quid pro quo activity, but also in connection with  
23 other conduct with which Mr. Rechnitz is expected to testify.

24 I don't have enough information now to believe that I  
25 can excise that portion of Mr. Rechnitz's testimony without

IB6KGRA1

1 unduly affecting the ability of the defendants to question him  
2 about his testimony.

3 Now, in declining to impose this constraint on the  
4 scope of the testimony that will be elicited from Mr. Rechnitz,  
5 however, please be clear that I am not now determining that I  
6 will permit a potential sideshow with respect to potential  
7 testimony by either Mayor de Blasio or Mr. Offinger. I have  
8 not made that determination at this point. So, counsel, you  
9 should not expect, as a right, that I will be permitting the  
10 testimony of each of those people. More importantly, of  
11 Mr. de Blasio. A motion to quash his appearance has been filed  
12 with the Court. I am not in a position to evaluate that  
13 application at the time, and, therefore, I did not grant the  
14 motion, nor have I denied it. So, to the extent that the  
15 parties are seeking to open with respect to this category of  
16 evidence, I will remind you that the Court has not yet ruled on  
17 the motion to quash the appearance of Mayor de Blasio in this  
18 proceeding, and I would caution you that you may not wish to  
19 open with respect to anticipated testimony that may not  
20 manifest itself. Once I have the opportunity to rule on that  
21 motion to quash.

22 So that's what I want to say about the Mayor de Blasio  
23 quid pro quo activity.

24 Any questions about that before I turn -- and I  
25 apologize, I'm going to have to turn briefly to the Bruton

IB6KGRA1

1 issue given the hour. Any questions about that?

2 MR. BELL: Just one moment, your Honor?

3 THE COURT: Please. Take your time, counsel.

4 (Pause)

5 MR. BELL: Thank you, your Honor.

6 Your Honor, we want to be clear on one thing. We do  
7 not intend to open on the de Blasio stuff, as earlier defined.

8 And, as such, we think that it would be appropriate,  
9 if only because it certainly isn't going to be necessitated by  
10 our opening, for the Court to counsel the defense not to open  
11 on something that is inherently somewhat inflammatory and may  
12 not materialize, pending a ruling that's going to require some  
13 thought and real consideration. To throw something like that  
14 out there now is not merely, I think, acting at the defendants'  
15 own peril, it's something that could presumably have a  
16 substantial effect on the jury, should they hear it, whether  
17 there is follow-through or not.

18 THE COURT: Thank you.

19 Counsel, I assume you're referring to the prospect of  
20 potential testimony by the mayor himself as opposed to a  
21 commentary during the opening about the anticipated testimony  
22 from Mr. Rechnitz?

23 MR. BELL: Certainly most specifically concerning the  
24 mayor appearing himself or Mr. Offinger appearing himself, but,  
25 really, this goes to the whole area, if only because I think

IB6KGRA1

1 that some of the concerns about the inflammatory nature of this  
2 are the same. We mentioned that there's going to be testimony  
3 about this subject matter, and it's the sort of thing that  
4 almost involuntarily prompts a juror to go ooh, whether there's  
5 follow-up or not. So I think that it affects the entire map of  
6 that subject matter.

7 THE COURT: Thank you.

8 MR. BELL: Being as this is a case about misconduct  
9 involving the NYPD and about these defendants, it's not  
10 necessary, your Honor.

11 THE COURT: Thank you. Fine. Understood.

12 Counsel for defendants, any questions about my ruling  
13 here?

14 You understand, of course, that you open on facts that  
15 you do not expect necessarily to come into evidence at your  
16 peril.

17 MR. MERINGOLO: Right. Your Honor, if we opened on  
18 the emails between Rechnitz and de Blasio and the relationship  
19 between Rechnitz and de Blasio, but didn't say de Blasio was  
20 going to come testify, I mean, that would be suicide for the  
21 defense to do that.

22 THE COURT: Thank you.

23 Ms. Necheles?

24 MS. NECHELES: I have no intention of saying that  
25 Mr. de Blasio will testify or Mr. Offinger. I'm not going to

IB6KGRA1

1 say that in my opening.

2 THE COURT: Thank you. So I'll leave it at that.

3 Counsel, the jurors are all here. I'd like to bring  
4 them in to show them that we can stay more or less on time. I  
5 have a relatively lengthy set of thoughts about the Bruton  
6 issue that were briefed to the Court. Because I want to start  
7 timely, I will just give you my summary, and then I'll take the  
8 opportunity during a break to read you how it is that I have  
9 analyzed the issue.

10 My summary with respect to this issue is that I share  
11 the defense's concerns about the procedural context in which  
12 this issue arises. That said, I believe that, substantively,  
13 the government's position with respect to the issue is correct  
14 as analyzed in their letter. That is my summary of my position  
15 with respect to the substantive issues. I have more detailed  
16 analysis regarding the issue. As a result, I expect to permit  
17 the introduction of those statements subject to an appropriate  
18 limiting instruction. I'm going to request that the parties  
19 present a proposal to me, understanding that the defense does  
20 not want that, but I would like to solicit the strongest  
21 possible limiting instruction in light of my view.

22 MS. NECHELES: Your Honor, I will then be crossing and  
23 eliciting more of the statements to put the entire statement  
24 into context, the other things that Jimmy Grant says that day  
25 as well. But just that day, limited to that day. But I will

IB6KGRA1

1 be eliciting, so that the jury can have the whole picture of  
2 what was said that day and what was not.

3 THE COURT: Thank you. We can talk about that  
4 further.

5 Anything else we need to talk about before we bring in  
6 the jury?

7 MS. LONERGAN: Your Honor, may I ask very quickly?

8 THE COURT: Please.

9 MS. LONERGAN: It seems to me what would be the most  
10 prudent, given the Court's ruling and what Ms. Necheles has  
11 just said -- we were going to call this witness second -- is  
12 not to do that, so that the parties have a chance to propose a  
13 limiting instruction, for the Court to craft an appropriate  
14 one, and, also, if there needs to be additional discussion  
15 about the scope of the testimony outside of those four  
16 statements. And that's fine, we're happy to change our witness  
17 order, but he's here, and I will let him go if we don't --

18 THE COURT: Counsel, I'm flexible as to --

19 MR. MERINGOLO: We don't need a limiting instruction  
20 on behalf of Grant. We're ready.

21 THE COURT: Thank you. Thank you.

22 I need to administer one to be very clear about the  
23 purpose and use for which this statement can be made, so I must  
24 administer a limiting instruction regarding this testimony. I  
25 do not believe that it will take a substantial amount of time

IB6KGRA1

1 for us to craft a sufficiently forceful one. So if the  
2 government believes that it can present a proposal to me in  
3 short order --

4 MS. LONERGAN: Sure.

5 THE COURT: -- I'd be happy to work with the parties.

6 MS. LONERGAN: We can move him to maybe after that  
7 short lunch break, and we'll still get him on today.

8 THE COURT: Good. Thank you.

9 Mr. Daniels is going to be bringing in the jury now.  
10 Just a few comments:

11 We all stand as the jury enters and leaves the  
12 courtroom. I'll tell them that that's what we're doing. Don't  
13 sit until all the jurors are seated, just as a sign of respect  
14 for them.

15 One other comment that I will tell you, counsel, and I  
16 will tell the jurors when they get here, too: I stand from  
17 time to time during the course of the trial day. Please don't  
18 make anything of it. I just don't like to sit all day. So if  
19 I'm distracting, I will try not to be, but please don't  
20 hesitate to let me do that.

21 MR. BELL: Yes, your Honor.

22 THE COURT: Thank you.

23 MS. LONERGAN: Your Honor?

24 THE COURT: Yes.

25 MS. LONERGAN: The government's now second witness is

IB6KGRA1

1 the witness to whom the newly raised patrol guide pertains, so  
2 whether we could take a break before he gets on the stand?

3 THE COURT: Did you say second witness?

4 MS. LONERGAN: The second witness, your Honor.

5 THE COURT: That's fine. We can talk about that  
6 briefly.

7 MS. NECHELES: Your Honor, can I raise one other  
8 issue?

9 THE COURT: Yes.

10 MS. NECHELES: I know the rule, in general, is that  
11 witnesses would not be permitted in the courtroom before they  
12 testify. And, generally, there is an exception for agents, or  
13 paralegals, or things. Ms. Cassidy, who worked on this case a  
14 long time with me, is a potential witness in this case, but I  
15 ask she be allowed to attend. She's here to hear the opening.

16 THE COURT: Thank you.

17 Let me say I believe I took this up at our very early  
18 pretrial conference. I asked if the parties wished to have any  
19 fact witness be excluded from the courtroom. I expect that any  
20 fact witness will be excluded from the courtroom until after  
21 their testimony.

22 Counsel for the United States, what's your view  
23 regarding Ms. Cassidy? Clearly, she is familiar with the facts  
24 of this case.

25 MR. BELL: Your Honor, I think that we have no

IB6KGRA1

1 objection to Ms. Cassidy being able to come in. She's in a  
2 bizarre posture, frankly, but that bizarre posture is that  
3 she's been a part of the case for two years, and I don't think  
4 that she's going to learn anything, certainly in openings,  
5 that's radically new to her. So to the extent that the idea is  
6 to have her for openings, we certainly don't object.

7 THE COURT: Thank you.

8 Counsel for Mr. Grant?

9 MR. MERINGOLO: We have no objection to having  
10 Ms. Cassidy.

11 THE COURT: Thank you.

12 MR. BELL: We'll note, along those same lines, that we  
13 do in fact have a case agent here. It's nobody that we -- it's  
14 Special Agent Joseph Downs. We don't expect to follow --

15 MR. MERINGOLO: We may call Mr. Downs, your Honor.

16 THE COURT: Thank you.

17 Any concerns about his presence here?

18 MR. MERINGOLO: No, not at all. We want him here.

19 THE COURT: Thank you.

20 (Continued on next page)

IB6KGRA1

1 (Jury present)

2 THE COURT: All the jurors can be seated. Thank you.

3 Ladies and gentlemen, you can be seated. Thank you.

4 First, ladies and gentlemen, thank you, all, for being  
5 here. I know you were all here on time. I very much  
6 appreciate that. I'd like to give you a few comments before we  
7 begin.

8 First, as you just saw, every time you come in and out  
9 of the courtroom, we will all rise. You can sit as soon as you  
10 get to your seat. We're standing as a sign of respect for you,  
11 given the importance of your role in this case.

12 Let me just give you a few comments before we begin  
13 with opening arguments.

14 To begin, as all of you already know, you're here to  
15 administer justice in this case according to the law and to the  
16 evidence. You are required to perform this task with complete  
17 fairness and impartiality and without bias, prejudice, or  
18 sympathy either for or against the government or the  
19 defendants.

20 Now, let me tell you a few words about the roles that  
21 we're going to be performing during the course of the trial,  
22 you as the jury and me as the Court. I am going to decide  
23 which rules of law apply to this case. I'm going to do that by  
24 making legal rulings throughout the course of the presentation  
25 of evidence, and, also, as I mentioned to you yesterday, as

IB6KGRA1

1 part of the final instructions that I will provide you  
2 regarding the law that applies. Those final instructions will  
3 come in after the evidence and all arguments by the parties are  
4 completed.

5 Now, in order for me to do my job, I may interrupt the  
6 proceedings from time to time to confer with the lawyers about  
7 the rules of law that should apply here. And as you've seen,  
8 and, as I mentioned earlier, sometimes we'll talk over here at  
9 the bench outside of your hearing. Some of those conversations  
10 may take longer than others. If that's the case, I expect that  
11 I will try to excuse you from the courtroom. I'm going to try  
12 my hardest to avoid such interruptions as much as possible, but  
13 please be patient and understand that the conferences are  
14 necessary in order to ensure the fairness of the trial, and  
15 they often have the effect of making the trial itself proceed  
16 faster.

17 While I decide the law that applies to this case, it  
18 is you, the ladies and gentlemen of the jury, who are the  
19 triers of the facts in this case. You will weigh the evidence  
20 that's presented and decide whether the government has proven  
21 that each of the defendants is guilty of the offenses charged  
22 against him in the indictment.

23 You must pay close attention to all the evidence  
24 that's presented here, and you must base your decisions solely  
25 on the evidence that's presented here in this case and my

IB6KGRA1

1 instructions about the law.

2 I say that you have to decide this case based on the  
3 evidence. It raises the question: What, then, is evidence?  
4 Evidence consists only of the testimony of witnesses,  
5 documents, and other things that are admitted into evidence in  
6 the case and any facts that the lawyers agree upon, or  
7 stipulate to, or that I may instruct you to find.

8 Now, some of you have probably already heard the term  
9 "circumstantial evidence" or "direct evidence." Let me say a  
10 few words about what each of those things are.

11 Direct evidence is direct proof of a fact, such as the  
12 testimony of an eyewitness. Circumstantial evidence is proof  
13 of facts from which you may infer, or conclude, that some other  
14 fact exists. The word "infer" or the words "to draw an  
15 inference" means to find that a fact exists from proof of  
16 another fact. An inference is only to be drawn if it is  
17 logical and reasonable to do so, and not by speculation and not  
18 by guesswork.

19 Now, in deciding whether or not to draw an inference,  
20 you must look at and consider all the facts in light of reason,  
21 your common sense, and your experience. Whether a given  
22 inference is to be drawn or not is entirely a matter for you,  
23 the jury, to decide. Circumstantial evidence does not  
24 necessarily prove less than direct evidence, nor does it  
25 necessarily prove more.

IB6KGRA1

1           Let me give you a short example to help you think  
2 about the distinction between direct evidence and  
3 circumstantial evidence. Now, assume -- and this is a mighty  
4 assumption today -- assume that when you came into the  
5 courthouse this morning, the sun was shining, and it was a nice  
6 day outdoors. Assume that the courthouse blinds were all  
7 closed, and then, while you're sitting here, somebody walks  
8 into the courthouse, into the courtroom, with an umbrella  
9 that's dripping wet, and then a few minutes later, somebody  
10 else walks into the courthouse with a raincoat that's also  
11 dripping wet.

12           Now, because you could not look outside the courtroom,  
13 and you could not see yourselves directly whether it was  
14 raining, you would have no direct evidence of the fact that it  
15 was raining, but on the combination of the facts that I have  
16 just asked you to assume about the umbrella and the raincoat,  
17 it would be reasonable and logical for you to conclude that it  
18 was raining outside. That's all there is to circumstantial  
19 evidence - you infer on the basis of your reason, your  
20 experience, and your common sense the existence or nonexistence  
21 of one fact from some other fact that has been established.  
22 And I am going to give you more instructions about direct and  
23 circumstantial evidence at the end of the case, but keep in  
24 mind that you are to consider all of the evidence that's  
25 presented in this case, whether direct or circumstantial.

IB6KGRA1

1           Now, I've just told you or given you a sense of what  
2 kinds of things are evidence, but there are certain things that  
3 are not evidence and must not be considered by you. Here's a  
4 list of some things that are not evidence:

5           First, statements and questions by the lawyers are not  
6 evidence, nor is any statement that I may make or any question  
7 that I may make of a witness. Arguments by the lawyers are not  
8 evidence.

9           Second, objections to questions are not evidence. You  
10 should all know that lawyers have an obligation to make  
11 objections when they believe that the evidence that's being  
12 offered is improper under the rules of evidence. You should  
13 not be influenced by the objections or by my rulings on them.  
14 If the objection is sustained, or if I tell the lawyer please  
15 rephrase the question, just ignore the question and ignore any  
16 answer that may have been given in response to the question.  
17 If the objection is overruled, which I may say overruled or I  
18 may say you can proceed, then you can treat the answer like any  
19 other answer. If I instruct you that a piece of evidence is  
20 received for a limited purpose only, you must follow that  
21 instruction and consider that piece of evidence only as I've  
22 instructed you.

23           Third, any testimony that I have excluded or told you  
24 to disregard is not evidence, and it must not be considered by  
25 you.

IB6KGRA1

1           And, fourth, anything that you may have seen or heard  
2 outside of the courtroom is not evidence, and it must be  
3 disregarded. As I've told you many times already, you are to  
4 decide this case based solely on the evidence that's presented  
5 here in the courtroom.

6           (Continued on next page)

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IB6TGRA2

1 THE COURT: Now in deciding the facts of the case,  
2 you'll have to decide on the credibility of the witnesses, that  
3 is, how truthful and believable they are.

4 Let me say now that there is no formula to evaluating  
5 evidence. For now, suffice it to say that all of you bring  
6 into this courtroom all of the experience and background of  
7 your lives. Do not leave your common sense outside of the  
8 courtroom. Same types of tests that each of you use in your  
9 everyday lives are exactly the same types of tests that you  
10 should use in deciding how much weight, if any, to give to the  
11 evidence that's presented to you in this case.

12 The law doesn't require you to accept all of the  
13 evidence admitted in trial. In determining what evidence to  
14 accept, you must make your own evaluation of the testimony from  
15 each of the witnesses and all of the exhibits that are received  
16 into evidence. It's essential, however, as I told you  
17 yesterday, that you keep an open mind until you have heard all  
18 of the evidence in this case. A case can only be presented  
19 step by step, witness by witness. And all of you know this  
20 from your own experience. You can hear one person give her  
21 version of some events and you think it sounds very impressive  
22 or even compelling, then yet, upon hearing another person's  
23 versions of the same event, or here perhaps even the same  
24 person cross-examined about that event, things may seem very  
25 different. In other words, there may be another side to any

IB6TGRA2

1 witness's story. You should use your common sense and good  
2 judgment to evaluate each witness's testimony based on all of  
3 the circumstances. Again, I can't emphasize too strongly how  
4 important it is that you all keep an open mind until the trial  
5 is over. You should not reach any conclusions about this case  
6 until all of the evidence has been presented to you and is  
7 before you.

8 Now all of you know this is a criminal case, and as  
9 such, the government has the burden of proving all of the  
10 elements of each charge against each defendant beyond a  
11 reasonable doubt. Although each of the defendants here have  
12 been indicted, you must remember that an indictment is only an  
13 accusation, it is not evidence, and each of the defendants has  
14 pleaded not guilty to that indictment.

15 To convict a defendant, the burden is on the  
16 prosecution to prove guilt beyond a reasonable doubt. That  
17 burden never shifts to a defendant for the simple reason that  
18 the law never imposes upon a defendant in a criminal case the  
19 burden or duty of calling any witnesses or producing any  
20 evidence. It's a cornerstone of our system of justice that  
21 every person accused of a crime is presumed to be innocent  
22 unless and until her guilt is established beyond a reasonable  
23 doubt.

24 I therefore instruct you that you are to presume that  
25 each of the defendants, Mr. Grant and Mr. Reichberg, is

IB6TGRA2

1 innocent throughout this trial and your deliberations until  
2 such time, if ever, that you as a jury are satisfied that the  
3 government has proven that defendant guilty of a given charge  
4 beyond a reasonable doubt.

5           The presumption of innocence is alone is enough to  
6 acquit a defendant unless you as a jury are convinced of a  
7 defendant's guilt after careful consideration of all the  
8 evidence in this case. A defendant never has the burden to  
9 present any evidence or to prove that he or she is not guilty.  
10 If the government fails to sustain its burden with respect to a  
11 defendant, you must find that defendant to be not guilty. The  
12 presumption of innocence is with each of the defendants here  
13 today as the trial begins, and it remains with each of them  
14 throughout the trial and into your deliberations unless and  
15 until you are convinced that the government has proven that  
16 defendant's guilt beyond a reasonable doubt.

17           Now let me give you a few comments about the rules and  
18 principles that are going to govern your conduct as jurors in  
19 this case. You have heard these things before. I will try to  
20 reduce these to shorthand going forward, but bear with me.

21           First, you must not talk to each other about this case  
22 or about anyone who has anything to do with it until the end of  
23 the case when you go into the jury room to talk about and  
24 decide your verdict. The reason for this requirement, as I  
25 already told you, is you must not reach any conclusion about

IB6TGRA2

1 the claims or the charges or the defenses in this case until  
2 all of the evidence is in. As I said, keep an open mind until  
3 you retire to start your deliberations at the end of the case.

4 Second, do not communicate with anyone else about this  
5 case or about anyone involved in it until the trial has ended  
6 and you have been discharged as jurors. When I say "anyone  
7 else," I include members of your family, your friends. As I  
8 said yesterday, "no communicating" means no communicating on  
9 Facebook, Twitter, blogs, whatever. You can tell your family  
10 and friends that you are seated as a juror in a criminal case  
11 but please don't tell them anything else about it until you  
12 have been discharged by me. As I said yesterday, you can tell  
13 them that you have been ordered by me not to discuss the case  
14 with them.

15 Third, do not let anyone talk with you about the case  
16 or anyone or anything that has anything to do with it. If any  
17 person should attempt to communicate with you about this case  
18 at any time throughout the trial, either in the courthouse or  
19 outside of the courthouse, you should immediately report that  
20 to my deputy, Mr. Daniels, who you already met, and you should  
21 not report it to anyone else. When I say you shouldn't report  
22 it to anyone else, don't even tell any of your fellow jurors  
23 about it, just tell Mr. Daniels and we will work throughout to  
24 deal with the issue together.

25 Now to minimize the possibility that that might

IB6TGRA2

1 happen, it's important that, as you did today, you go straight  
2 into the jury room, and as you did this morning, you remain in  
3 the jury room throughout the course of the trial day. There  
4 are bathrooms in the jury room there, you should use them, not  
5 the bathrooms in the public hallways. You must not use the  
6 cafeteria. You should not use any public telephones here.  
7 Given that our morning and afternoon breaks are going to be  
8 short, it's probably best that you remain in the jury room if  
9 you can.

10 Fourth, do not do any research or investigation about  
11 the case or anyone who has anything to do with it or anything  
12 about the case generally. Don't go to any of the places that  
13 may be described. Since this case involves some things that  
14 happened in particular locations, you may be tempted to go  
15 visit those locations yourselves. Don't do that.

16 Also, don't read or listen to or watch any news  
17 reports about the case, if there are any. Just avoid any such  
18 stories. And if you see something on the TV or in the paper,  
19 just don't look at it. Don't go on the internet or use  
20 whatever digital or communications devices it is that you may  
21 use to see what you can learn about the case to inform yourself  
22 about it.

23 Again, these are very important rules to comply with  
24 for the very basic and important point that I have repeated  
25 already, which is that the decision of the jury in this case

IB6TGRA2

1 must be based on the evidence presented here and on the law.  
2 All that you will need to do in order to decide this case will  
3 be presented to you here in open court by the very capable  
4 lawyers who represent the parties in this case. And I expect  
5 you to inform me immediately, through Mr. Daniels, if you  
6 become aware that a fellow juror violated these instructions.

7 Also, please let me know if any person you know comes  
8 into the courtroom. It's a public trial, so that could happen.  
9 Anyone in the public is invited to come into this courtroom.  
10 But it's important that you not hear from any person who may  
11 know what may have happened here, if anything, outside of your  
12 presence. So if you see a friend or relative come into court,  
13 please send me a note through Mr. Daniels, and again, we will  
14 deal with it appropriately.

15 Now the last thing that I want to raise is notes.  
16 Mr. Daniels has a bunch of paper for you, and I'm going to ask  
17 you to let me know if you would like to take notes. If so,  
18 Mr. Daniels can give you a pad of paper and a pen. If you do  
19 decide to take notes, please begin writing on the second page  
20 of the pad of paper, and what you should write on the first  
21 page is just put your juror number. So juror number one, if  
22 you decide to take notes, you just write "One" on the first  
23 page of the pad and then flip it over and start writing on the  
24 second page of the pad.

25 It is important that only the juror taking the notes

IB6TGRA2

1 see that respective juror's notes. So if you do take notes in  
2 the way I described, do it only on the pads that Mr. Daniels is  
3 about to give you. Don't take your notes home with you. You  
4 should leave them in the jury room during your breaks and at  
5 the end of each day.

6 Now while I give you the opportunity to take notes,  
7 please let me tell you that you do not need to take notes. As  
8 you can see, we have a court reporter throughout the course of  
9 these proceedings. Notes are just an aid to your own  
10 recollection. And the fact that any particular juror takes  
11 notes does not entitle that juror's views to any greater weight  
12 than that of any other juror. Remember that any notes that you  
13 may choose to take are for your use only and are not to be  
14 shown to any other juror. It's your memory that controls. And  
15 if you do decide to take notes, please don't get so involved in  
16 taking notes that you don't pay attention to what is happening  
17 in the witness box and the evidence in the courtroom.

18 Now once you're in your deliberations, if there is a  
19 disagreement between one juror's notes and another juror's  
20 notes or between one juror's notes and another juror's  
21 recollection, we can always ask the court reporter to read back  
22 the testimony or have the relevant portion of the testimony  
23 sent back to you in the jury room, because it's the official  
24 court transcript that controls, not any particular juror's  
25 notes.

IB6TGRA2

1           So Mr. Daniels will hand out notepads now to anyone  
2           that wants one. Just raise your hand and Mr. Daniels will give  
3           you one. You will have another opportunity to ask if you would  
4           like later on.

5           As Mr. Daniels is doing that, let me tell you about  
6           exhibits. During the course of the trial exhibits are going to  
7           be introduced into evidence here. They will be marked by an  
8           exhibit number. If there's an exhibit that you are  
9           particularly interested in seeing during your deliberations,  
10          please feel free to mark that down. At the end of the trial,  
11          as you begin your deliberations, I expect to provide you with  
12          substantially all of the exhibits in the jury room for your  
13          review, but if there's something that you would like to see  
14          that's not sent back, you can tell me what it is that you would  
15          like to see.

16          So now we're going to begin the trial. In this trial,  
17          as I told you, we'll start every day at 9:15 and continue until  
18          no later than 3:30, including breaks. The presentation of  
19          evidence is likely to proceed over a number of weeks, and I  
20          will try to give you a sense of our schedule as the case  
21          progresses so you have a sense of how we're doing.

22          It's important that you all be here on time. You have  
23          done wonderfully so far, so please just continue to do that.  
24          If you are all on time then we'll be able to start on time. If  
25          any one of you is missing, then we'll lose a few minutes. And

IB6TGRA2

1 none of us can start until all of you are here. If we lose ten  
2 or 20 minutes every day, we may not get the trial completed on  
3 the schedule that I anticipated. So please be here by no later  
4 than 9:00.

5 Let me say a few words about the so-called structure  
6 of the trial, the arc of the trial as you will see it progress  
7 and give you a few words about what we'll be doing, the lawyers  
8 for both the government and each of the defendants, and me.  
9 After the trial, as I said earlier, I'm going to give you  
10 detailed instructions, and those instructions will control your  
11 deliberations in the case, but for now let me just simply  
12 explain how it is that the trial will proceed.

13 The first step in the trial will be opening  
14 statements. First, the government will make an opening  
15 statement, which is simply an outline to help you understand  
16 the evidence as it's presented. Remember, the opening  
17 statement is not evidence, its purpose is only to help you  
18 understand what the evidence will be and what the government  
19 will try to prove. Then each of the defendant's attorneys will  
20 have the opportunity to make an opening statement.

21 Now as you remember from my list of what is not  
22 evidence from earlier, at that point in the trial no evidence  
23 will have been introduced by either side. After the opening  
24 statements, then the government will have the opportunity to  
25 present its evidence. The government's evidence I expect will

IB6TGRA2

1 consist of testimony of witnesses as well as documents and  
2 other exhibits. The government's lawyers will examine the  
3 witnesses, and then each of the defendant's lawyers will have  
4 the opportunity to cross-examine the witnesses.

5 Following the government's case, either defendant may  
6 or may not present a case. Remember that each of the  
7 defendants is presumed innocent unless and until proven guilty,  
8 and that each defendant has no obligation to present any  
9 evidence to demonstrate his innocence. Counsel for the  
10 government may have the opportunity to cross-examine any  
11 witnesses testifying for either defendant.

12 After the presentation of the evidence is completed,  
13 the attorneys will deliver their closing arguments to summarize  
14 and interpret the evidence. And just as I just told you the  
15 lawyers' opening statements are not evidence, their closing  
16 arguments are not evidence either.

17 After the closing arguments I will turn to you to  
18 instruct you regarding the law. Then you will retire to  
19 deliberate in the jury room on your verdict, which must be  
20 unanimous and must be based on the evidence that that's  
21 presented at trial. Your deliberations will be secret. You  
22 will not have to explain your verdict to anyone.

23 Now we're going to begin with the initial stage of the  
24 case which, as I told you, is opening statements, and we're  
25 going to begin with the United States.

IB6TGRA2

Opening - Ms. Lonergan

1           So at this time let me ask all of you to give your  
2 undivided attention to each of the lawyers as they make their  
3 opening statements. Thank you.

4           Counsel for the United States.

5           MS. LONERGAN: May I proceed, your Honor?

6           THE COURT: You may.

7           MS. LONERGAN: Every single officer in the New York  
8 City Police Department is required to take an oath, an oath to  
9 faithfully discharge the duties of the office of police officer  
10 in the Police Department of the City of New York to the best of  
11 his or her abilities. Because to be a member of the New York  
12 City Police Department is to hold a public trust, to swear an  
13 oath to not only follow but enforce the law, to protect the  
14 lives and property of all citizens of New York City by treating  
15 every citizen with courtesy, professionalism and respect, and  
16 to enforce the laws impartially. That is how the New York City  
17 Police Department is supposed to work, that police officers  
18 make decisions based on integrity and how to best serve the  
19 people of New York City. And that is how tens of thousands of  
20 members of the New York City Police Department conduct  
21 themselves, with honor and integrity, day in and day out to  
22 keep our city safe.

23           But that New York City Police Department, the New York  
24 City Police Department where money and corruption have no  
25 place, was not the New York City Police Department of these two

IB6TGRA2

Opening - Ms. Lonergan

1 men, the defendants, Jeremy Reichberg and James Grant.

2 Grant, one of the city's highest ranking police  
3 officers and Reichberg, a private citizen, had their own vision  
4 of the NYPD. They saw it as a tool to advance their own  
5 interests. Reichberg wanted things from the NYPD, things like  
6 NYPD boats and helicopters at his private events, a license to  
7 carry a gun, and special treatment for himself and his friends.  
8 And he didn't want to have to go through normal channels to get  
9 them. So how did he make sure he could get the things that he  
10 wanted? By lining the pockets of police officers, including  
11 James Grant. Grant, for his part, took bribes worth thousands  
12 of dollars, improvements to his house, jewelry, and a trip on a  
13 private plane. In return, he picked up the phone when  
14 Reichberg called, and he used his official power within the  
15 police department to get things done for Reichberg.

16 That is why we are here today. Over the course of  
17 years, these defendants exploited Grant's position within the  
18 NYPD for their own personal gain. They abused the trust that  
19 the NYPD and the people of the City of New York placed in  
20 Grant, one of the city's highest ranking police officers. They  
21 defrauded the city and its residents of Grant's honest services  
22 as a police officer, and they broke the law. For their  
23 actions, they are each charged with fraud and bribery.

24 This is the government's opening statement. This is  
25 our opportunity to give you a sense of what the evidence

IB6TGRA2

Opening - Ms. Loneragan

1 presented during the trial will show. And I'm going to do that  
2 in two parts: First, I'm going to describe what the evidence  
3 at trial will show; and second, I will explain how we're going  
4 to prove it to you.

5 So what will the evidence show? The evidence will  
6 show that Reichberg, with the assistance of a wealthy  
7 businessman, paid bribes worth tens of thousands of dollars to  
8 grant and other NYPD officers. And in exchange to those  
9 bribes, Reichberg and his partner demanded and received police  
10 action when they wanted it.

11 So what will you learn about a few of the key players  
12 in this bribery scheme? Let's start with James Grant. You  
13 will learn that Grant attended the police academy as a new  
14 recruit in 1996. After graduation, he rose swiftly through the  
15 ranks. By 2005 he was a lieutenant assigned to the 66  
16 Precinct. The 66 Precinct is in Brooklyn, it includes the  
17 neighborhood of Borough Park where Jeremy Reichberg lives.

18 It was during Grant's time at the 66 Precinct that  
19 Grant met Reichberg. They became close and stayed in contact  
20 as Grant continued to move up the ranks, to captain in 2006,  
21 and eventually to deputy inspector in 2014, when Grant became  
22 the commanding officer or CO of an entire precinct in  
23 Manhattan. In that position, Grant had over a hundred police  
24 officers under his command. He was their leader, setting an  
25 example and making daily decisions about how they would perform

IB6TGRA2

Opening - Ms. Lonergan

1 their jobs, setting priorities and deciding how to use  
2 resources.

3 As his swift rise makes clear, Grant was well-liked  
4 within the NYPD. He was also well-liked by Reichberg, who  
5 showered gifts on Grant because Grant could make things happen  
6 at the NYPD. And while you will learn that Grant and Reichberg  
7 became friends over time, make no mistake, this was at its core  
8 a business relationship. Grant got expensive things, and in  
9 exchange, Reichberg got assistance from the police department  
10 when he wanted it. This for that. Quid pro quo. You scratch  
11 my back and I'll scratch yours.

12 And Jeremy Reichberg, you will learn that Reichberg  
13 was a businessman and a self-styled liaison between the Borough  
14 Park Jewish community and the NYPD. Reichberg sought influence  
15 in the NYPD to get police action for himself and for people he  
16 knew, police escorts, access to police boats and helicopters,  
17 assistance with arrests and tickets, help with gun licenses.  
18 And how did he get these things? Through corrupt relationships  
19 with Grant and other police officers, giving them expensive  
20 meals, luxurious trips, and other gifts.

21 Why do this? Access to the NYPD, being able to get  
22 police action for himself and his friends, made Reichberg  
23 appear important in his community.

24 And it was also a way of making money. You see,  
25 Reichberg sometimes charged people for the police action he got

IB6TGRA2

Opening - Ms. Lonergan

1 for them. You will hear that Reichberg wasn't the only person  
2 trying to buy cops and their services. He had rivals, other  
3 people who wanted the same power and were also willing to give  
4 bribes to cops in exchange for police action, other people who  
5 made money from their police connections by charging fees to  
6 get police action.

7 And in part, because of this competition, you will  
8 learn that Reichberg sought to have access to the highest  
9 ranking officers possible. Although Grant was a rising star,  
10 Reichberg wanted to hedge his bets, especially since it's not  
11 always easy to know who is going to get a promotion. So  
12 Reichberg provided lavish gifts to lots of officers, presiding  
13 over large fancy dinners for high ranking NYPD officers, all  
14 free of cost to the officers, of course.

15 And this strategy worked. In 2013, two of the cops  
16 Reichberg had been bribing rose even higher in the NYPD. Now  
17 Reichberg had even more access. Over time, Reichberg's need  
18 for action from Grant faded. He still kept Grant close,  
19 though, because Grant was young and had the potential to rise  
20 in the NYPD.

21 But Reichberg was directed many of his bribes and  
22 requests to people with even more power at the NYPD, and Grant  
23 noticed. In the past, Reichberg and his businessman friend had  
24 bought expensive gifts for Grant's wife and children on  
25 Christmas. When Reichberg didn't come around with those gifts

IB6TGRA2

Opening - Ms. Lonergan

1 in 2014, Grant wasn't happy about it. You will hear this  
2 yourself in a recorded phone call between Grant and Reichberg.  
3 You will hear Grant complaining in his own words that, quote,  
4 the two Jewish elves didn't come for Christmas, and that he  
5 expected the bribes to keep coming his way.

6 Now how did Reichberg afford to pay for things for so  
7 many police officers? Reichberg was enterprising. He didn't  
8 pay for everything himself. He had partners, including the  
9 businessman I mentioned earlier. His name was Jona Rechnitz.

10 Reichberg met Jona Rechnitz around 2008 when Jona  
11 Rechnitz was a young, up and coming real estate businessman.  
12 Reichberg introduced Jona Rechnitz to his roster of high  
13 ranking NYPD connections, and Jona Rechnitz liked what he saw.  
14 You see, Jona Rechnitz figured that the key to success in  
15 business was to make as many connections with powerful people  
16 as possible. He wanted to be known as a guy who knew how to  
17 make things happen, a guy who was well connected. And  
18 Reichberg was nothing if not connected.

19 You will learn that in around 2008, when Jona Rechnitz  
20 wanted to start making connections in the NYPD, Reichberg  
21 suggested that Jona Rechnitz make a donation to the NYPD  
22 football team. And Jona Rechnitz did, to the tune of thousands  
23 of dollars. A short time later, to impress his boss, Jona  
24 Rechnitz wanted to make a big gesture, so he asked Reichberg to  
25 help arrange a police escort through the Lincoln Tunnel from

IB6TGRA2

Opening - Ms. Lonergan

1 New Jersey to Manhattan for the international head of Jona  
2 Rechnitz's whole company, who had flown into New Jersey.

3 Reichberg reached out to his police connections, who  
4 made it happen, and in no small way. The police closed a lane  
5 of the Lincoln Tunnel, providing an private escort for the  
6 group into the city, and they were off and running. You will  
7 learn this continued for years, from 2008 through 2016,  
8 Reichberg and Jona Rechnitz buying things for Grant and other  
9 cops, and Reichberg and Jona Rechnitz getting police action  
10 from those very same cops over and over again. Quid pro quo.  
11 This for that. The cops got expensive gifts, and Reichberg and  
12 Jona Rechnitz got police action when they wanted it.

13 Now these were rarely direct swaps: You buy me an  
14 expensive dinner, I will immediately arrange a police escort.  
15 The defendants were far too savvy for that. Instead, this was  
16 a long-term relationship. Reichberg and Jona Rechnitz were  
17 making investments in Grant and other officers, regularly  
18 providing gifts with the expectation that as opportunities  
19 arose, if and when Reichberg or Jona Rechnitz ever wanted  
20 anything from the police, they could pick up the phone, call  
21 someone like Grant, and get the police action they wanted. And  
22 they did this again and again and again.

23 So I would like to give you a few examples of the  
24 things that Reichberg and Jona Rechnitz gave the cops, what we  
25 call quids, and then some example of the police action they got

IB6TGRA2

Opening - Ms. Lonergan

1 in return, called the quos.

2 So what were some of the ways in which Reichberg and  
3 Jona Rechnitz bribed Grant and other cops? Here are just a few  
4 examples: Home imprisonments. You will learn that Reichberg  
5 and Jona Rechnitz arranged and paid for upgrades at Grant's  
6 house, new windows worth more than \$5,000 and new railings.

7 Family travel. Jona Rechnitz paid for two nights in a  
8 luxury hotel in Rome for Grant and his wife.

9 More luxurious travel. Reichberg and Jona Rechnitz  
10 arranged and paid for a trip to Las Vegas to watch the 2013  
11 Superbowl. Reichberg, Jona Rechnitz, Grant and others flew  
12 each way on a private jet with a prostitute on board. They  
13 stayed in a big suite in a high end hotel and they watched the  
14 Superbowl in style.

15 Holiday gifts. For Christmas in 2013, Reichberg and  
16 Jona Rechnitz dressed as elves, brought jewelry for Grant's  
17 wife and a Nintendo system for his kids.

18 And countless high end dinners.

19 Now these were just some of the bribes to Grant. As I  
20 mentioned earlier, there were also bribes for other high  
21 ranking officers.

22 And what did Reichberg and Jona Rechnitz get in return  
23 for these and other bribes? They asked for police action, big  
24 and small, and Grant and other officers did what they could to  
25 satisfy those requests. Here's a few examples:

IB6TGRA2

Opening - Ms. Lonergan

1           Gun licenses. When Reichberg wanted a license to  
2 carry a gun in New York City, Grant made sure that Reichberg's  
3 application was handled quickly, without a full background  
4 investigation, and it was granted in two months.

5           Now a word on gun licenses. You will learn that it  
6 isn't easy to get a license to carry a gun in New York City,  
7 and it's even more difficult to get what is called a full carry  
8 or a business carry license, which allows the license holder to  
9 carry a gun on his or her person 24 hours a day, seven days a  
10 week. You need to have a reason, a very good reason to get  
11 that kind of license. And that is the kind of license that  
12 Reichberg wanted, and Jona Rechnitz, too. So they needed a  
13 cover store to explain why they qualified. Who provided that  
14 cover story? Grant. You will hear on a recorded phone call  
15 Grant coaching Reichberg on exactly what reason, a false  
16 reason, to put on Jona Rechnitz's gun license application.

17           Arrests. You will learn that Reichberg received phone  
18 calls when people in his core group were arrested. What did  
19 Reichberg do? He contacted Grant, and Grant in his turn called  
20 the NYPD officers handling those arrests to get special  
21 treatment for Reichberg's friends.

22           NYPD vehicles. In the summer of 2015 another officer  
23 Reichberg was bribing arranged to have an NYPD boat and  
24 helicopter make special trips to circle and fly over a private  
25 dinner cruise where Reichberg was entertaining friends. Just a

IB6TGRA2

Opening - Ms. Lonergan

1 few months earlier, Grant tried to arrange a similar helicopter  
2 flyover for Reichberg.

3 Some of the actions that Grant and other officers took  
4 for Reichberg and Jona Rechnitz were extraordinary, others were  
5 mundane. Some wasted NYPD resources and he affected countless  
6 others, like closing a lane of the Lincoln Tunnel, to help no  
7 one but Jeremy Reichberg or Jona Rechnitz.

8 Some of the actions had the potential to benefit  
9 others, like providing extra protection at synagogues. But all  
10 of this police action had one thing in common: Grant was  
11 acting because he had been bought and paid for, because he was  
12 being bribed, and that's a crime.

13 So that's an overview of this years-long plan to buy  
14 and sell the services of the NYPD, a plan that came to an end  
15 in 2016 when Grant and Reichberg were both arrested by the FBI.  
16 And what did Grant and Reichberg do when they figured out that  
17 the jig was up, the game was over? They took steps to cover up  
18 their crimes because they knew that what they were doing was  
19 wrong.

20 You will learn that before he was arrested, when Grant  
21 was interviewed by the FBI in early 2016 about his relationship  
22 to Reichberg, he lied, saying he had never gotten anything  
23 improper from Reichberg, nothing for free.

24 You will also learn that the night before Reichberg  
25 was arrested he gathered up a bunch cell phones, cell phones

IB6TGRA2

Opening - Ms. Lonergan

1 that he used for his corrupt communications with Grant, Jona  
2 Rechnitz and others, and dozens of NYPD and other law  
3 enforcement business cards. He gave all of these things to his  
4 brother and asked his brother to hold them in the hopes that  
5 they will never be found.

6 But the plan fell apart when his brother, rather than  
7 leaving, fell asleep in one of Reichberg's spare bedrooms, and  
8 when he woke up the next morning, FBI agents were already  
9 searching the house.

10 The agents quickly found the items he was holding for  
11 Reichberg, selfies filled with text message after text message  
12 between Reichberg and Grant, Reichberg and other police  
13 officers, and business cards, cards for Grant and cards for  
14 member after high ranking member of the New York City Police  
15 Department.

16 For attempting to conceal all of this evidence by  
17 giving it to his brother, Reichberg alone is also charged with  
18 obstruction of justice. That is separate from the fraud and  
19 bribery charges that both he and Grant face in this trial.

20 So that's what the evidence in this trial will show.  
21 How are we going to prove that to you? You will hear testimony  
22 from many different witnesses. You will hear from law  
23 enforcement witnesses, like the FBI agent who searched  
24 Reichberg's brother and the FBI agent who interviewed Grant.  
25 You will hear from NYPD officers who were told by Grant and

IB6TGRA2

Opening - Ms. Lonergan

1 others to actually do the things that Reichberg or Jona  
2 Rechnitz requested. These officers often had no idea what was  
3 going on behind the scenes, that their services were in fact  
4 being sold in exchange for bribes, like the officers who  
5 piloted the NYPD boat arranged for Reichberg, and officers who  
6 received a phone call asking them to give special treatment to  
7 someone they had just arrested.

8 You will also hear from NYPD supervisors who will tell  
9 you about the training at the NYPD academy and about the duties  
10 and decisions entrusted to NYPD officers. You will hear from  
11 witnesses who provided some of the bribes, for example the  
12 contractor who did work on Grant's home and the travel agent  
13 who arranged Grant's hotel room in Rome.

14 You will see physical evidence, photos and videos.  
15 You will see a stack of NYPD business cards seized from  
16 Reichberg's brother on the day of Reichberg's arrest. You will  
17 also see photos and videos of Reichberg and Jona Rechnitz with  
18 the police officers they bribed, including Grant, and photos of  
19 the private plane they rented to fly with Grant to Las Vegas,  
20 photos of the prostitute who accompanied them on the trip,  
21 videos of Reichberg and Jona Rechnitz driving into a VIP  
22 section of police headquarters, and a video of them dressed as  
23 elves to deliver Christmas gifts to police officers.

24 You will also hear from some of the defendants'  
25 partners in crime. You will hear from corrupt police officers

IB6TGRA2

Opening - Ms. Lonergan

1 who worked at the NYPD's gun license division and were  
2 accepting bribes in exchange for gun licenses. They will tell  
3 you that they sped up Reichberg's gun license application  
4 because Grant told them to.

5 And you will also hear a detailed account of this  
6 years-long police bribery scheme from a man who worked closely  
7 with the defendants, Jona Rechnitz. He has pleaded guilty to  
8 his crimes. Jona Rechnitz will tell you about how it began,  
9 when Reichberg suggested that Jona Rechnitz make a large  
10 donation to the NYPD football team and how it grew from that  
11 point.

12 He will tell you about how he and Reichberg formed a  
13 corrupt relationship with Grant and other officers, buying them  
14 meals and gifts and travel, so that they could call on these  
15 officers whenever they wanted anything from the police. And he  
16 will tell you how they cashed in on these bribes, asking for  
17 and receiving police action from Grant and others.

18 Now let's be clear about Jona Rechnitz and the corrupt  
19 license division witnesses. They all committed serious crimes.  
20 Plain and simple. They were caught, prosecuted, and pled  
21 guilty to their crimes. They will take the witness stand and  
22 tell you about those crimes. Jona Rechnitz will also tell you  
23 that he didn't tell the whole truth about any of this the first  
24 few times he was approached by law enforcement. Beyond that,  
25 he told lies to all manner of people in his private life, in

IB6TGRA2

Opening - Ms. Lonergan

1 his business life, and in his circle of friends, often just to  
2 make himself look like a big shot.

3 Jona Rechnitz will tell you he's testifying under what  
4 is called a cooperation agreement, and that he is doing so in  
5 the hopes of getting a lighter sentence. The same goes for the  
6 two corrupt officers from the NYPD licensing division I  
7 mentioned earlier, the ones who helped Grant get a gun license  
8 for Reichberg. They, too, have pleaded guilty through  
9 cooperation agreements.

10 I expect defense counsel will ask you to focus and  
11 scrutinize these witnesses, especially Jona Rechnitz. And you  
12 should. Evaluate Jona Rechnitz's testimony and the testimony  
13 of the corrupt license division officers carefully and see if  
14 it fits together with all of the other evidence that you will  
15 see and hear in this case. When you do that, you will find  
16 that their testimony is backed up by everything else you will  
17 see and hear at this trial; the other witnesses, the physical  
18 exhibits, the photos and videos, and the other evidence you  
19 will see and hear.

20 Finally, and powerfully, you will hear about the  
21 crimes that the defendants committed through their own voices  
22 and in their own words. In 2015, the FBI, with court approval,  
23 got a wiretap on the cell phones of Reichberg and Jona  
24 Rechnitz. Between those wiretapped phone calls, text messages  
25 and emails, the FBI captured the defendants in real-time

IB6TGRA2

Opening - Ms. Lonergan

1 talking about their bribery arrangement.

2 For example, you will hear and see clear as day  
3 Reichberg and Jona Rechnitz asking Grant for police action,  
4 asking other officers for police action. And you will see the  
5 officers' responses, assuring Reichberg and Jona Rechnitz that  
6 they were being taken care of. You will hear and see Reichberg  
7 inviting the officers to dinners and the officers accepting  
8 those invitations. You will see messages between Reichberg and  
9 Grant about Reichberg's Christmas visit to Grant's house. You  
10 will hear Grant demands that the contractor come back to his  
11 house to fix leaks in the windows that Reichberg provided. You  
12 will hear Grant coaching Reichberg about Jona Rechnitz's gun  
13 license application. And you will hear Grant's frustration  
14 after Reichberg and Jona Rechnitz focused their attention on  
15 other officers, meaning that Grant isn't getting all the bribes  
16 that he has come to expect.

17 While you are going to hear from a lot of witnesses  
18 and see a lot of different types of evidence, this is, at its  
19 core, a straightforward case: Old-fashioned bribery.  
20 Expensive gifts given to cops in return for the promise of  
21 police action.

22 Jeremy Reichberg and Jona Rechnitz showered New York  
23 City Police Department officials with tens of thousands of  
24 dollars in illicit gifts so that they could pick up the phone  
25 and get police action whenever they wanted it. And James Grant

IB6TGRA2

Opening - Ms. Necheles

1 let himself be bought. He sold not only himself but the  
2 services and the integrity of the New York City Police  
3 Department. And in the process, he betrayed the oath he swore  
4 to faithfully discharge his duties as an officer of the New  
5 York City Police Department, and he broke the law.

6 At the end of this trial we will have the chance to  
7 speak with you again about the evidence that's been presented.  
8 But between now and then I would like to ask you to do three  
9 things: First, pay close attention to evidence; second, follow  
10 Judge Woods' instructions; third, use your common sense, the  
11 same common sense that you use in your everyday lives as New  
12 Yorkers. If you do that, the defendants will get a fair trial,  
13 the government will get a fair trial, and you will reach the  
14 only verdict that is consistent with the facts and the law in  
15 this case, that the defendants are guilty as charged.

16 THE COURT: Thank you, counsel.

17 Counsel for Mr. Reichberg.

18 MS. NECHELES: Thank you, your Honor.

19 Good morning. My name is Susan Necheles, and along  
20 with my assistant, Zachary Willis, we represent Mr. Reichberg  
21 here.

22 The most important thing that you can hear this  
23 morning has already been told to you by Judge Woods. Judge  
24 Woods explained to you, instructed you on the fundamental rules  
25 of our system of criminal justice. He told you two things, two

IB6TGRA2

Opening - Ms. Necheles

1 principles that I want to focus on here: One, the defendants  
2 are presumed innocent; and two, the government must prove their  
3 guilt on each and every charge beyond a reasonable doubt.

4 These are bedrock principles of our system. They are  
5 what we as a people believe in. The burden of proof sits right  
6 here at this table right here with these people right here.  
7 The government must prove each and every element of the crime  
8 and they must prove it with evidence that you, the jurors,  
9 believe in, that you trust, that you believe can be the basis  
10 for an important decision that -- one of the most important  
11 decisions.

12 And with that in mind, I want to talk to you about  
13 what I expect the evidence here to show. Jeremy Reichberg and  
14 Jimmy Grant are friends. They are friends. They are a rare  
15 breed of friends today, people from totally different  
16 backgrounds, people who live totally different lives who have  
17 reached across the divide to become true friends.

18 Jimmy Grant is not Jeremy Reichberg's only police  
19 friend. You will hear the names through the trial of Michael  
20 Harrington, Steve McAllister, Mike Melici, many others. They  
21 are police officers who you will learn that Jeremy Reichberg  
22 was friends with long before Jona Rechnitz, the government's  
23 star witness, appeared on the screen.

24 Jeremy Reichberg was not going out to fancy  
25 restaurants with these police officers. That's not how he

IB6TGRA2

Opening - Ms. Necheles

1 became friends with them. He was not taking them on fancy  
2 trips. You will see Jeremy Reichberg sitting around his  
3 crowded dining room table in the small apartment that he had  
4 when he first knew them celebrating the Jewish holiday of  
5 Purim. They were laughing and just hanging around with him and  
6 his family.

7 You will see pictures of Jeremy Reichberg dancing,  
8 dancing with Jimmy Grant at a Jewish bar mitzvah celebrating  
9 the bar mitzvah of his son, and you will see how joyous they  
10 are together. You will see other police officers there, too,  
11 celebrating this bar mitzvah, because that's the kind of thing  
12 that friends do with other friends, they celebrate family  
13 occasions together.

14 You will meet Jona Rechnitz, the government's star  
15 witness. In 2008 or so Jona Rechnitz met Jeremy. Eventually  
16 they began to spend time together with police officers. But  
17 even after Jona came into Jeremy's life and even after Jona  
18 decided to dump the police officers as his friends, Jeremy  
19 stayed friends with the police officers. They are friends to  
20 this day. They are real friends. When he was in the hospital,  
21 they came to visit him. They called his wife to make sure that  
22 she was okay. They continued to hang out. They talked almost  
23 daily on the phone, and you will hear these long conversations.

24 Now the government will introduce evidence that Jeremy  
25 tried to get promotions or transfers for some of his friends

IB6TGRA2

Opening - Ms. Necheles

1 like Jimmy Grant, his good friend, by putting in a good word  
2 with other police officers that he knew. They will introduce  
3 evidence that Jeremy tried to help another police officer  
4 friend, Michael Harrington, get business for his family's  
5 security company.

6 In other words, Jeremy Reichberg is charged with  
7 trying to help his friends. Well, he pleads guilty to that.  
8 Yes, he tried to help his friends whenever he could. He is not  
9 ashamed that he cared for his friends and wanted to help them.  
10 Friends try to help each other. You know that from your own  
11 life. That's part of what it means to be good friends. That  
12 is not a crime. And it is not a crime to be friends with a  
13 police officer.

14 And yes, Jimmy Grant, Mike Harrington, Stephen  
15 McAllister, and Jeremy's other police officer friends sometimes  
16 helped Jeremy. You will hear that the police helped -- police  
17 officers help friends and family sometimes. Jeremy would  
18 sometimes do favors for them, they would it sometimes do favors  
19 for Jeremy.

20 Now you heard the prosecutor describe what she thinks  
21 the evidence will show about these favors, the so-called quo.  
22 I do not expect that the evidence will come out the way that  
23 she described it. And you will decide for yourself. You will  
24 see.

25 And you are also going to hear the government take the

IB6TGRA2

Opening - Ms. Necheles

1 position at this trial that some of the favors violated police  
2 department regulations. That will be a matter of dispute at  
3 the trial. But whether or not the favors violated police  
4 department regulations is not the issue in this case, even  
5 though you will hear much testimony about it.

6 There is no crime charged of violating police  
7 regulations. The crime charged is bribery. That's honest  
8 service fraud. It involves bribery. Was there a quid pro quo?  
9 Was that what was going on here? And the evidence will show  
10 there were no bribes here, Jeremy Reichberg and the police  
11 officers were friends.

12 So why and how did Jeremy become friends with police  
13 officers? Several reasons you will hear about. First, the  
14 evidence will establish that many members of the Hasidic  
15 community tried to form relationships with police officers, and  
16 that that is something that the police department encourages.

17 You heard the prosecutor just talk about rivals and  
18 other people who were trying to bribe the police. There will  
19 be no evidence, I will expect, no evidence. What you will hear  
20 is that other people in the Hasidic community also tried to  
21 hang out with police officers, tried to have close  
22 relationships.

23 Why? The police department encourages this and the  
24 Hasidic community wants to do it. The police department wants  
25 relationships with insular communities in New York. And the

IB6TGRA2

Opening - Ms. Necheles

1 Hasidic community is an insular community. They're a community  
2 that keeps to themselves, that speak a different language  
3 often, that often are not comfortable in the community.

4 And you will hear that the police department devotes a  
5 lot of money, millions of dollars in resources, to community  
6 affairs and community policing, attempting to develop  
7 relationships and connections to community members and inroads  
8 into insular communities. It tries to develop these  
9 relationships in the Chinese community, the Spanish community,  
10 the African-American community, and in religious communities  
11 like the Muslim community and the Jewish community.

12 And it is not only the police who seek to develop  
13 these relationships. Members of minority groups who are  
14 subjected to terror attacks often want to have close  
15 relationships with the police. You will learn that the Hasidic  
16 community wants to have close relationships with the police  
17 because Hasidic Jews are frequently subjected to hate crimes.  
18 It's just an ugly fact of life. And the Hasidic community has  
19 responded to this ugly fact by cultivating relationships with  
20 the police.

21 And we will introduce evidence that often Hasidic  
22 rabbis would turn to Jeremy Reichberg seeking to ensure that  
23 there was police protection in front of their synagogue,  
24 particularly when terror attacks were going on around the  
25 world.

IB6TGRA2

Opening - Ms. Necheles

1           And before the Jewish holidays, Jeremy Reichberg would  
2 be invited to One Police Plaza to attend the briefings there  
3 with the heads of the police department who would discuss with  
4 community representatives that they had chosen to invite, like  
5 Jeremy Reichberg, they would discuss the police plans to keep  
6 the Jewish community safe over the holidays.

7           So part of the reason -- not the whole reason, part of  
8 the reason that Jeremy started hanging out with the police and  
9 part of what he continued to do over time grew out of the  
10 community need.

11           But there was a second reason, which was a lot more  
12 personal. You will learn that Jeremy is a police buff, a  
13 complete nerdy, geeky police buff. You will hear that the FBI  
14 searched his home, and among the items that were seized were a  
15 crazy amount of police paraphernalia, including photos,  
16 clothing, badges, police microphones, business cards. You are  
17 going to hear Jeremy talk on the phone with one police officer  
18 after another, spending unbelievable amounts of time discussing  
19 in great detail what is going on in the police department.

20           And by the way, part of what you will hear in the  
21 recordings that the government made of Jeremy's telephone calls  
22 is that Jeremy is not always truthful. He brags and he says  
23 things that are not always true. It's just who he is.

24           (Continued on next page)

25

IB6KGRA3

Opening - Ms. Necheles

1 MS. NECHELES: (Continuing) He exaggerates things,  
2 and sometimes, you will learn, that he can be a hot head, and  
3 lose his temper, and act in a ridiculous, childish manner. You  
4 will see that happen, and you will hear evidence of him doing  
5 it. Jeremy is not a perfect person. None of us, I submit,  
6 are.

7 But there will be no doubt in your mind, listening to  
8 the tapes and seeing the evidence, that Jeremy Reichberg loved  
9 police, was a complete police buff, and that is part of what  
10 led him to be friends with the police.

11 And the third reason that Jeremy became such close  
12 friends with police officers is that Jeremy did not fit  
13 completely in his community. The Hasidic community is an  
14 insular community with very strict rules about how the members  
15 behave and live their lives. People in the Hasidic community  
16 believe that their lifestyle and the rules they follow about  
17 how to dress, what to eat, how to socialize, and everything  
18 else are rules that are set by God, as interpreted by the  
19 rabbis. They want to bring up children who will also follow  
20 these rules and will stay true to their Hasidic traditions.  
21 They do not want their children to assimilate and become like  
22 the non-Hasidic community.

23 To protect against assimilation, most Hasids socialize  
24 only with other Hasids. Thank God, in America, people can  
25 follow their own religious beliefs. That is what America is

IB6KGRA3

Opening - Ms. Necheles

1 about, and that is what the Hasidic community does.

2 But Jeremy was different from many Hasids. He liked  
3 to know other people. He liked to explore and find out about  
4 other ways of life. He liked to hang out with other guys,  
5 smoke cigars, eat lots of food, tell dirty jokes, talk about  
6 good looking women, gossip, and more, things that you may take  
7 for granted, but things that he could not necessarily do in his  
8 community.

9 Becoming friends with police officers gave Jeremy the  
10 freedom to be different, to explore a whole different world.  
11 You will see, Jeremy spent massive amounts of time hanging out  
12 with police officers in person and chatting with them on the  
13 phone, gossiping. There's nothing wrong with any of that.

14 Now, in approximately 2008, Jona Rechnitz met Jeremy.  
15 That is when the bribes supposedly began. The government will  
16 not have evidence of bribes, so-called bribes, before then.  
17 And the government just characterized these bribes as follows:  
18 Lining the pockets of police officers. That's what you just  
19 heard.

20 But they didn't tell you what the evidence about the  
21 bribes will be. The evidence about these so-called bribes were  
22 that they were mainly meals and trips paid for by Jona  
23 Rechnitz. Not by Jeremy, Jona Rechnitz. These were not things  
24 that were going into people's pockets. This was Jona Rechnitz  
25 wanting to go out to fancy kosher restaurants and inviting

IB6KGRA3

Opening - Ms. Necheles

1 people to come hang out with him. He paid for that. This was  
2 Jona Rechnitz, who pretended to own a private plane, saying,  
3 come with me on my private plane for a two-day trip to the  
4 Dominican Republic, come with me to Las Vegas on a trip where  
5 I'm going to go gamble, and I'm going to be comped. This was  
6 Jona Rechnitz wanting people to hang out with him, and wanting  
7 to look fancy, and wanting to look like he had contacts.

8 It was not money going into people's pockets. That  
9 was not lining people -- this was Jona Rechnitz.

10 And the government talked about home improvements to  
11 Jimmy Grant. That is what they say, Jimmy Grant -- you will  
12 see, when you hear the evidence, that the government is wrong  
13 on much of what they are saying here and wrong about this.

14 The government also characterized this and described  
15 this as Jeremy Reichberg's scheme, that Jeremy Reichberg gave  
16 the gifts, Jeremy Reichberg lined the police officers, and they  
17 said at some point, Jeremy Reichberg recruited another person,  
18 Jona Rechnitz, to come along with this. Well, you will hear  
19 the evidence, and you will see, this money was Jona Rechnitz.  
20 This was all Jona Rechnitz. And I ask you, when you listen to  
21 that evidence, and you hear as it comes out, that this was all  
22 Jona Rechnitz, ask yourself: Why didn't the government tell  
23 you that in the opening? Why did they say, Jeremy, Jeremy,  
24 Jeremy, when it was Jona Rechnitz, and you will see that it was  
25 Jona Rechnitz? Because Jona Rechnitz is the government's star

IB6KGRA3

Opening - Ms. Necheles

1 witness, and the entire case rests on his testimony. There is  
2 no other witness in this case who will say that the dinners,  
3 and the trips, and the things that Jona was giving and that  
4 Jona was paying for were bribes.

5 Jona Rechnitz will claim that when he paid for these  
6 meals and trips for police officers, he had the specific intent  
7 to bribe police officers. And that is what this case is about:  
8 Was Jona taking Jeremy and the police officers out to fancy  
9 meals and fancy trips because he wanted to be friends with them  
10 and hang out with them? Was he trying to curry friendship, and  
11 favor, and goodwill? Or was he doing all of this with a  
12 specific intent to bribe police officers?

13 Jona will admit to you, on the witness stand, that he  
14 has said that there was never an explicit quid pro quo. Never.  
15 He never said to anyone -- to Jeremy or to the police -- I am  
16 giving police officers these things, so that police officers  
17 will commit an official act for me in the future. But he is  
18 going to say, everybody understood, everybody knew, that when I  
19 took them to dinner, that was a bribe. That's what I expect  
20 Jona to say on his direct examination.

21 Jona Rechnitz will get up on the stand and testify,  
22 and it will be a very scripted testimony. This is a man, you  
23 will learn, who has met with the prosecutors, either in person  
24 or on the phone, more than 70 times preparing and rehearsing  
25 his testimony. But hold off any conclusions until you hear the

IB6KGRA3

Opening - Ms. Necheles

1 cross-examination. After the government is done asking  
2 questions, the defense attorneys will ask questions, and you  
3 will see, Jona will have to admit lie after lie. His entire  
4 life was a lie. He lied, and he conned people who he pretended  
5 were his best friends. He lied to investors. He lied and  
6 conned insurance companies and healthcare providers. He lied  
7 to the police when they came to his office to interview him.  
8 He lied to everyone.

9           Jeremy Reichberg, Jimmy Grant, Michael Harrington,  
10 Phil Banks, all of these police officers thought Jona Rechnitz  
11 was their friend. He sure acted like their friend. But he's  
12 going to tell you that he was only pretending, that he was  
13 using them, that it was all a con. Jona Rechnitz was a social  
14 climber. He was desperate to look important, for people to  
15 think he was a big deal. It was important to him to be seen  
16 with people who were important. It was important to him that  
17 everyone think that he was rich. Jona Rechnitz, you will hear,  
18 had a rich daddy, and he wanted everyone to think that he  
19 personally was a billionaire. How did he do that? First, he  
20 threw around money.

21           The government only wants to show you the money that  
22 Jona spent on dinner and police, and it was a lot of money, no  
23 question, but we will put that into context. We will show you  
24 that Jona Rechnitz was conspicuously spending truly obscene  
25 amounts of money to create the impression that he was filthy

IB6KGRA3

Opening - Ms. Necheles

1 rich. And Jona also created the impression that he was filthy  
2 rich by lying constantly about what he owned. He bragged, and  
3 bragged, and bragged.

4 But the crazy thing is a lot of times it was flat-out  
5 lies. He lied about owning major Manhattan office buildings  
6 worth hundreds of thousands of dollars. He lied about owning a  
7 yacht and created an elaborate scheme to make people think he  
8 owned this. He lied about owning hotels. He lied about  
9 everything. And the lies were all aimed at the same thing - he  
10 wanted everybody to think he was a billionaire.

11 To be clear, the government charges, in this case,  
12 that Jeremy Reichberg and Jona Rechnitz conspired together to  
13 bribe police. But it was only Jona who was throwing around  
14 money, taking everyone out to dinner all the time, giving  
15 hundreds of thousands of dollars in police contributions,  
16 taking people on fancy trips, flying around on private planes,  
17 taking overnight trips to Las Vegas and the Dominican Republic,  
18 and gambling. Jeremy Reichberg, you will learn, did not have  
19 that kind of money. He was not rich. People, when he had  
20 people over to dinner at his home, a few times, he paid for  
21 people to go out, but it was Jona Rechnitz, undisputed, you  
22 will see, that almost everything you will hear about in this  
23 case -- the meals, the trips, the planes, the gifts --  
24 everything was Jona Rechnitz.

25 But although virtually a hundred percent of the money

IB6KGRA3

Opening - Ms. Necheles

1 was Jona's, I expect that he will take the stand, and he will  
2 claim this was all Jeremy's idea, Jeremy agreed with him to  
3 bribe the police officers and to bribe, in addition, public  
4 officials, including, I expect him to say, the mayor of  
5 New York. Because Jona doesn't want to just stop at police  
6 officers. Jona, I believe, will also say, the mayor of  
7 New York was bribed and other politicians.

8           There is no charge in this case of bribing any  
9 politicians, but because Jona is going to bring all of these  
10 allegations into this case, I am going to have to spend time  
11 unpacking it and showing you that Jona is lying, because he is,  
12 and the evidence will show that.

13           At the end of this case, Jona's story that Jona and  
14 Jeremy bribed the mayor, and bribed other politicians, and  
15 bribed political officials will not match up with the other  
16 evidence and will make no sense. And Jona's motive and his  
17 reasons for lying will be clear to you once you see and hear  
18 the evidence. And you will see Jona had a strong motive to  
19 make up this bribery allegation.

20           There is one other charge in this case, one other  
21 crime charged in this case against Jeremy, and that is  
22 obstruction of justice and destruction of evidence. You heard  
23 the prosecutor just describe it, but you will see, the evidence  
24 will not be at all what the government described. You will see  
25 that there were 35 electronic devices in Jeremy Reichberg's

IB6KGRA3

Opening - Ms. Necheles

1 home. He did not try to destroy them. He did not try to get  
2 rid of them. He knew, for months, and months, and months, that  
3 the government was investigating him and intended to charge him  
4 with a crime. How did he know it? It was all over the  
5 newspapers. And you will hear that during this time period,  
6 Jona Rechnitz destroyed computers, destroyed evidence, got rid  
7 of what he wanted to get rid of. Jeremy Reichberg didn't. And  
8 how do you know that? You're going to see. I'm going to bring  
9 into this courtroom all the things that were seized from his  
10 house, all of the evidence that the government took - tons of  
11 cards, PBA cards, cards of police officers, the kind of things  
12 that his brother had a few of on him when he left the house.  
13 There were hundreds left in the house. Not exactly a scheme to  
14 destroy evidence, not exactly a scheme to hide things.  
15 Hundreds of pictures. Everything that was on the drives that  
16 the government claimed he tried to sneak out of the house were  
17 also on his computers. You will see that. There was no  
18 attempt by Jeremy Reichberg to obstruct or to hide anything.  
19 That was Jona Rechnitz who did that, and who was not charged  
20 with it.

21 So there's one final thing that I want to address  
22 before I sit down, and it's a thing that I think is a  
23 distraction, and I ask you, please, keep your eye on the ball,  
24 do not be distracted by inflammatory evidence that I expect the  
25 government to introduce in this case, because I expect that the

IB6KGRA3

Opening - Ms. Necheles

1 government will introduce evidence about prostitutes and may  
2 elicit testimony -- may, I don't know -- from Jona, claiming  
3 that Jeremy Reichberg slept with sex workers.

4 I am not going to cross-examine Jona or anyone else  
5 about whether Jeremy Reichberg had sex with sex workers or  
6 anyone else. Jeremy Reichberg's sex life is none of my  
7 business, and I submit that it's nobody's business except for  
8 his wife and family. But I am worried that because Jeremy is a  
9 Hasidic Jew, who presents himself to the world as a religious  
10 man, that you jurors will judge him more harshly than you would  
11 judge a nonreligious person because you may think that he is a  
12 hypocrite.

13 So I want to address that.

14 MS. LONERGAN: Objection, your Honor.

15 THE COURT: Thank you.

16 Can you please limit yourself to evidence. You'll  
17 have the opportunity to argue in closing arguments.

18 MS. NECHELES: Okay.

19 You all will see Jeremy Reichberg is just a person  
20 just like the rest of us, and in his community, what he wears  
21 is a uniform. There will be no evidence that he held himself  
22 above others or that he acted in any way that he thought he was  
23 better than others. Do not let the uniform that Jeremy  
24 wears --

25 MS. LONERGAN: Objection, your Honor.

IB6KGRA3

Opening - Mr. Meringolo

1 THE COURT: Thank you.

2 You can proceed, counsel.

3 MS. NECHELES: -- or irrelevant testimony about  
4 whether he did anything with sex workers distract you from the  
5 true issues in this case, because at the end of this trial, you  
6 will be asked to determine whether the evidence proves beyond a  
7 reasonable doubt that Jeremy Reichberg bribed police officers,  
8 or conspired to do so, or whether he obstructed evidence, and I  
9 submit that the reliable, truthful evidence in this case will  
10 not prove these charges beyond a reasonable doubt. And I will  
11 ask you to return a verdict of not guilty on all the charges.

12 Thank you.

13 THE COURT: Thank you, counsel.

14 Counsel for Mr. Grant.

15 MR. MERINGOLO: With the Court's permission?

16 THE COURT: Please proceed.

17 MR. MERINGOLO: Good morning, ladies and gentlemen.

18 JURY MEMBERS: Good morning.

19 MR. MERINGOLO: My name is John Meringolo, and along  
20 with Anjelica Cappellino, we represent Deputy Inspector James  
21 Grant. I'm not going to read from a script. I was thinking  
22 about what I was going to do over the last few days, and we've  
23 been waiting for you for approximately two and a half years.  
24 We've been waiting for two and a half years to discuss this  
25 case with you, that the government has charged Deputy Inspector

IB6KGRA3

Opening - Mr. Meringolo

1 Grant with bribery and honest services. So what the government  
2 is saying is that --

3 THE COURT: I'm sorry, counsel. Counsel, I'm sorry,  
4 can I ask you to use the microphone? There's an overflow of  
5 courtroom.

6 MR. MERINGOLO: Jeremy Reichberg --

7 I can't move, your Honor?

8 THE COURT: Thank you. Please stay at the microphone.

9 MR. MERINGOLO: Jeremy Reichberg and Jimmy Grant  
10 cannot be friends. That's what the government is actually  
11 saying, that an Irish Catholic guy from Coney Island, Brooklyn,  
12 and a Jewish guy from Borough Park, Brooklyn, can't be friends,  
13 because, ladies and gentlemen, if they're friends, you must  
14 vote not guilty. And that's that. That's the case.

15 The government has said they're going to play tapes.  
16 Thank God they're going to play tapes, because you're going to  
17 listen to the tapes, and you're going to hear two friends,  
18 specifically the government's tape that they reference in their  
19 opening statement of which they said Grant and Jeremy were  
20 doing some illicit things. Grant gets on the phone, you may  
21 hear the evidence will show, so you don't love me anymore? And  
22 he says, Jeremy says, the evidence will show, you're busy,  
23 you're busy, you're busy, you're a comped stat. And what is  
24 comped stat? That's something that the deputy inspector of the  
25 police department would present for something with his

IB6KGRA3

Opening - Mr. Meringolo

1 community.

2 And then it goes on, and I want you to really listen  
3 to the tape, and then it goes on, and on, and on, and they say,  
4 Jeremy says, you don't have time for me, you have new friends.  
5 He's busting his chops, right? We're from New York City, we  
6 know what busting chops is, right? This is no illicit thing.

7 You have new friends, I don't know who you're hanging  
8 out with. And then Jimmy Grant will say, the evidence will  
9 show, I'll tell you, bro, I ain't hanging out with nobody.  
10 Now, Jimmy Grant has a potty mouth when he's talking with  
11 Jeremy Reichberg, so don't hold it against him. And then the  
12 government was going to want you to say -- they're going to  
13 want to say this is the illicit conversation in this whole  
14 case, the Jewish elves didn't come to Christmas. The two  
15 Jewish elves, they are bantering back and forth. Listen to  
16 that conversation. Listen to it again, and again, and again.  
17 They are friends talking. He never brings up anything again.  
18 It's just BS-ing, they're busting chops. He's not saying, oh,  
19 bro, if you don't give me any money tomorrow, I'm not going to  
20 help you. And then at the end of that conversation, he says,  
21 what about the gun license that we're talking about? What do  
22 we have to do? And Jimmy says, yo, I can only bring a horse to  
23 water, I can't make him drink it. You have to fill out the gun  
24 license, you have to get a notarized copy, and submit it.

25 Well, ladies and gentlemen, if any one of you, or me,

IB6KGRA3

Opening - Mr. Meringolo

1 or anyone here wants to get a gun license, if you go on  
2 Google -- I'm not really a tech guy, but if you go on Google,  
3 and you say how do I get a gun license from the NYPD --

4 MS. LONERGAN: Objection, your Honor.

5 THE COURT: Thank you.

6 Counsel, please limit yourself to the evidence.

7 MR. MERINGOLO: The evidence will show that Jimmy  
8 Grant is just reading of what anyone else could read off the  
9 Internet to his friend Jeremy. There's nothing improper with  
10 that.

11 And then this Jona Rechnitz that my co-counsel spoke  
12 about, right -- this guy, I mean, it's amazing when you see  
13 him -- when he's on this cross-examination, it's going to be  
14 amazing. He cannot tell the truth for anything. He bribed --  
15 remember this? He's bribing, Jona Rechnitz is bribing, the  
16 evidence will show. He's bribing everybody. Jeremy, Jimmy,  
17 this one, that one, de Blasio. He wants a gun license, but  
18 guess what he doesn't get? The briber-in-chief doesn't get his  
19 gun license that he wants. What kind of scheme is this that  
20 he's not getting what he wants? Because it's not a scheme.

21 And then you'll hear conversations -- thank God this  
22 wire was up. Thank God from January 13th to May 12th, 2015,  
23 the evidence will show, thank God that wire is up. And then  
24 what happens? The FBI goes to Jimmy Grant's house, the  
25 inspector of the 19th Precinct, the commander of the 19th

IB6KGRA3

Opening - Mr. Meringolo

1 Precinct, on February 24th, 2016. That's seven, eight, nine  
2 months after all these conversations you're going to hear, that  
3 the FBI has to monitor as they're happening. They show up to  
4 Jimmy Grant's house, and what happens? What does he say? They  
5 ask him about Jeremy Reichberg. And it's 6:00 in the morning,  
6 they go to the deputy inspector's house with his wife and two  
7 little kids, and what does he say? He says Jeremy's my friend.  
8 Now, we're from Brooklyn, that means a lot. I know maybe some  
9 of you guys are from the Bronx, but we're from Brooklyn, and  
10 when we say you're our friend, we mean it, and it doesn't  
11 matter what you look like.

12 So that's what the evidence is going to show here.  
13 That's what the evidence is going to show.

14 So, they say Jimmy Grant is a deputy inspector  
15 commanding the 19th Precinct. Ladies and gentlemen, you know  
16 where the 19th Precinct is? The 19th Precinct is on the Upper  
17 East Side. So May 12th, the wire goes down. There's Agent  
18 Downs, he mounted the wire right there, Agent Downs, all the  
19 conversations are in by May 12, 2015.

20 They show up at Jimmy Grant's house, he commands the  
21 19th Precinct. That's where the Pope stayed during this  
22 interim, that's where President Obama stayed during the  
23 interim, that's where President Netanyahu stayed, the number  
24 one, the number two, and the number three terrorist targets in  
25 the world.

IB6KGRA3

Opening - Mr. Meringolo

1 MS. LONERGAN: Objection.

2 THE COURT: Counsel, I'm sorry, can I ask you to come  
3 up.

4 (Continued on next page)

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IB6KGRA3

Opening - Mr. Meringolo

1 (At the sidebar)

2 THE COURT: There's an objection, counsel?

3 MS. LONERGAN: Your Honor, it's not at all clear how  
4 this is going to come into evidence.

5 THE COURT: Thank you.

6 Counsel, how is this going to come into evidence?

7 MR. MERINGOLO: He's commander of the 19th Precinct.  
8 Everybody knows what the commander of the 19th Precinct does.

9 THE COURT: That wasn't the question. The question  
10 is: How is the evidence about where Barack Obama, Netanyahu,  
11 and the like stayed --

12 MR. MERINGOLO: During Grant's --

13 THE COURT: That's not the question.

14 MR. MERINGOLO: The question is how is it going to  
15 come in?

16 THE COURT: Yes.

17 MR. MERINGOLO: Through the FBI agents.

18 THE COURT: Thank you.

19 You should be very mindful, counsel, I'm concerned  
20 because you're testifying. You cannot say what I think, what I  
21 say in Brooklyn, that doesn't matter.

22 MR. MERINGOLO: Okay. I understand.

23 THE COURT: Counsel, I expect you will be putting on  
24 evidence about what a Google search will show. You cannot  
25 testify about what you found in a Google search.

IB6KGRA3

Opening - Mr. Meringolo

1 MR. MERINGOLO: Okay.

2 THE COURT: I don't know what the basis is regarding  
3 the contents of the Google search.

4 With respect to this evidence, again, to the extent  
5 it's coming in, it's not a problem.

6 MR. MERINGOLO: We'll put it in.

7 THE COURT: But I'm just concerned that you may be  
8 making statements that are not founded in the evidence, so I  
9 just ask you to be mindful of that.

10 MR. MERINGOLO: Of course.

11 MS. LONERGAN: I also note for the record, there's  
12 been no compliance with Touhy. In fact, they tried to serve  
13 the FBI through us. We informed them we can't accept service  
14 for the FBI agents through the government, and that they needed  
15 to comply with Touhy, and that has not happened.

16 THE COURT: Good.

17 MR. MERINGOLO: Your Honor, there's four FBI agents on  
18 their witness list.

19 THE COURT: Thank you. That's fine.

20 I'm sorry for interrupting.

21 MR. MERINGOLO: That's fine, Judge.

22 THE COURT: Thank you very much.

23 (Continued on next page)  
24  
25

IB6KGRA3

Opening - Mr. Meringolo

1 (In open court)

2 THE COURT: Thank you, counselor. I'm sorry for the  
3 interruption. Please proceed.

4 MR. MERINGOLO: No.

5 Ladies and gentlemen, what I say is not evidence. You  
6 have to see how the evidence comes out in the case. But the  
7 evidence will come out that the wire went down May 12th, 2015,  
8 and then Jimmy Grant was indicted on a complaint on June 20,  
9 2016. The evidence may show he spent 19 years, 11 months, and  
10 20 days on the job, and during that period of time, there was  
11 not one complaint internally and not one complaint from any  
12 citizen.

13 MS. LONERGAN: Objection.

14 MR. MERINGOLO: The evidence may show --

15 THE COURT: Thank you.

16 You can proceed, counsel.

17 MR. MERINGOLO: The evidence may show not one  
18 complaint internally or one complaint from a citizen.

19 Now, the government said that Jimmy Grant, and Jeremy  
20 Reichberg, and all these other people conspired to get Jimmy  
21 Grant the 19th Precinct, and that he became a CO, that he  
22 commanded the precinct. The evidence may show that Jimmy Grant  
23 was one of the top people in his 1996 class. The evidence may  
24 show that he was the first person from that class to be  
25 promoted sergeant. The evidence may show that he was the first

IB6KGRA3

Opening - Mr. Meringolo

1 person from that class to be promoted lieutenant. The evidence  
2 may show that he was one of the first people to be promoted  
3 captain. The evidence may show that Jimmy Grant commanded the  
4 Brooklyn South Task Force, which oversaw 13 precincts. And  
5 then the evidence will show that he became the commander of the  
6 19th Precinct.

7 That's Jimmy Grant's career. That's who Jimmy Grant  
8 is. And for the government to say that Jimmy Grant did not get  
9 this promotion on his own merit -- you'll see. I don't want to  
10 say. But for them to say that is -- it's not nice, as my  
11 grandmother would say. It's not nice, it's not nice. But  
12 that's what the evidence will show.

13 Now, we're going to see this Jona Rechnitz, but I  
14 don't want to beat it to death because Jeremy's counsel really  
15 did a great job. But Jona Rechnitz pled guilty to a  
16 cooperation agreement. The evidence will show that he lied to  
17 the FBI for 13 months before he decided to tell the truth. He  
18 lied to our New York FBI. He lied to these prosecutors at this  
19 table. He lied to those agents in the back. He lied to Agent  
20 Downs there for 13 months. And then, within three or four  
21 meetings, the government desired to give him a cooperation  
22 agreement. And they have every right to. So three or four  
23 meetings, maybe four or five hours each meeting tops, after  
24 lying to our New York FBI for 13 months, he gets his  
25 cooperation agreement. What does he plead guilty to? He

IB6KGRA3

Opening - Mr. Meringolo

1 pleads guilty to bribing Jimmy Grant and Jeremy Reichberg, but  
2 he also pleads guilty to bribing Mayor de Blasio, because in  
3 his mind, and the government was there when he pled guilty, in  
4 their mind, Jona Rechnitz was bribing Mayor de Blasio. The  
5 evidence may show Mayor de Blasio is not indicted. The  
6 evidence shows that he's going to come in here and say he took  
7 Jimmy Grant to the Super Bowl --

8 MS. LONERGAN: Objection, your Honor.

9 THE COURT: Thank you.

10 He referring to?

11 MR. MERINGOLO: Jona Rechnitz, the deceitful witness,  
12 will come here and say that he took Jimmy Grant on a private  
13 jet to watch the Super Bowl -- I keep saying go to the Super  
14 Bowl, so I apologize for that -- to watch the Super Bowl in  
15 Vegas. And the evidence will show, in this case, that  
16 somebody -- Jona Rechnitz will testify that this was on the  
17 front page of the paper, that Jimmy Grant slept with a  
18 prostitute. Okay?

19 The evidence will show that he's made that story up,  
20 changed that story three, four times. The evidence will show,  
21 in this case -- and I hope it does, and I don't believe the  
22 government was part and parcel with this -- but the evidence  
23 will show that he made up that Jimmy Grant slept with a  
24 prostitute. The evidence will definitely show that he met the  
25 prostitute prior to watching the Super Bowl. The evidence will

IB6KGRA3

Opening - Mr. Meringolo

1 show he was on the plane -- she was on the plane, she was at  
2 the hotel room, and the evidence will show he met her after  
3 that. He used her sex services. But now he wants to come in  
4 and say Jimmy Grant, the father of two, he's the one who had  
5 sex with the prostitute.

6 Jona Rechnitz did get Jimmy Grant, and his wife, and  
7 his kids a hotel room for two nights in Rome. The evidence  
8 will show that he said it was his hotel. The evidence will  
9 show that he said he owned 25 Wall Street, which is a two,  
10 three hundred million dollar building. The evidence will  
11 show -- I believe, I may be wrong with the addresses -- but the  
12 evidence will show 15 Broad Street, which is another two, three  
13 hundred million dollar building. And the evidence will show he  
14 said, I own a hotel, Jimmy, why don't you go to the most  
15 luxurious hotel in Rome the two nights with your family.

16 The evidence will also show, ladies and gentlemen,  
17 prior to that, Jimmy Grant paid for his own hotel, but Jona  
18 said, take this two nights for free. Jimmy Grant had no  
19 intention, he's not mooching on anybody, there will be no  
20 evidence of that. The evidence will show, and the government  
21 said in their opening, about windows, right? Windows. So the  
22 evidence will show that in October of 2013, one year from  
23 Hurricane Sandy, which was October 2012, Jimmy Grant's windows  
24 were broken. They're going to bring in the guy who put the  
25 windows in. And it's one of Jeremy Reichberg's construction

IB6KGRA3

Opening - Mr. Meringolo

1 workers, he put the windows in for Jimmy Grant. We're not  
2 denying that. The evidence is also going to show he put the  
3 windows in -- and here's common sense, here's why I've been  
4 waiting for you, ladies and gentlemen, for two and a half  
5 years, here's why I've been waiting for you -- the evidence  
6 will show he got the windows in October 2013. The government  
7 is going to play a tape in 2015, and Jimmy says, I'm painting  
8 my windows every two weeks. Respectfully, to the construction  
9 worker, he did a terrible job and ruined Jimmy's basement and  
10 his house, because it floods all the time. That's what  
11 happened. That's what happened. We're not denying it.

12 The evidence will also show that on June 20th, 2016,  
13 the government said, Jimmy Grant got \$6,000 railings. They  
14 arrested him on -- 19 years, 11 months, and 20 days, they  
15 arrested him, and they said he got railings, \$6,000. The  
16 evidence will show those railings were \$2,500, and the evidence  
17 will show Jimmy Grant paid for his own railings.

18 Back to Jona Rechnitz. He's going to get on the  
19 stand, and the evidence is going to show he stole tens of  
20 millions of dollars. The evidence is also going to show he  
21 never paid taxes on that money. So he's cooperating with the  
22 government pursuant to a cooperation agreement, which is  
23 lawful -- I believe it was signed on 6/6/16 -- and he still  
24 hasn't paid taxes on his millions of dollars, ladies and  
25 gentlemen. I want you to take that into consideration when

IB6KGRA3

Opening - Mr. Meringolo

1 you're reviewing this evidence.

2 And when you do review the evidence, the government  
3 has to prove each and every element of each and every crime  
4 beyond a reasonable doubt. And if they don't do that, ladies  
5 and gentlemen, you must vote not guilty.

6 Now, another aspect of this case -- I'm going to try  
7 to defend Jimmy Grant to the best of my ability -- is that they  
8 say in order to convict him, you have to say Jimmy Grant  
9 provided official acts. Okay? The official acts that the  
10 government is saying in this case are PBA cards. Jimmy  
11 Grant --

12 MS. LONERGAN: Objection.

13 THE COURT: Thank you.

14 Counsel, can I -- I'm sorry, I'd like to just ask you  
15 to come up again. I'm sorry.

16 MR. MERINGOLO: This has been litigated for two, three  
17 years.

18 THE COURT: Come up, please. Thank you.

19 (Continued on next page)

IB6KGRA3

Opening - Mr. Meringolo

1 (At the sidebar)

2 THE COURT: Sorry. Counsel, there's an objection?

3 MS. LONERGAN: Yes, your Honor.

4 We are not, as we have explained, going to say that  
5 the PBA cards are official action, and giving that this is a  
6 confusing term, we think that it's very misleading to the jury  
7 to state otherwise in opening.

8 THE COURT: Thank you.

9 MS. LONERGAN: The Court's instructions on the law  
10 control with respect to official acts and everything.

11 THE COURT: Thank you.

12 Let me just say this: Part of the reason why I asked  
13 you to come over -- I'll reserve some comments -- was about the  
14 arguments about the law. I said this during our, I'll call it,  
15 pretrial conference previously. I have not yet provided the  
16 parties with proposed charges. I'm concerned about arguments  
17 about the law in the context of opening statements, where the  
18 parties do not know what the charges are or are going to be.

19 So I just want to caution you, counsel, about arguing  
20 the law, given that it hasn't been established here and that  
21 that's not what we're doing in opening statements.

22 Just since we're here, in any event --

23 MR. MERINGOLO: I'm done in five minutes, Judge.

24 THE COURT: Thank you. That's fine.

25 Just reminders:

IB6KGRA3

Opening - Mr. Meringolo

1           You can't vouch, so you cannot say counsel did a great  
2 job, you cannot comment on what you believe about the evidence,  
3 such as I do not believe that the government was part and  
4 parcel of this. And I'd ask you to stop referring to the  
5 amount of time that the defendants have been waiting for this.  
6 I don't think that that's appropriate to put in front of the  
7 jury. In other words --

8           MS. NECHELES: Judge, I will ask that at some point --  
9 not right now, but at some point, that your Honor -- because  
10 there will be all this evidence in this case about PBA cards  
11 starting today, I will ask that your Honor instruct the jury  
12 that it is not an official act to give PBA cards, and that they  
13 are giving them, and people have not alleged to be something  
14 wrong.

15           THE COURT: Thank you.

16           I'm happy to talk about what the instructions are, and  
17 I apologize again for bringing you over.

18           MR. MERINGOLO: Don't worry about it, Judge.

19           THE COURT: You are going into the law, and I was  
20 concerned about that.

21           MR. MERINGOLO: Judge, I'm a former fighter. I can  
22 take it.

23           THE COURT: That's good. Fine. Thank you very much.

24           (Continued on next page)

IB6KGRA3

Opening - Mr. Meringolo

1 (In open court)

2 THE COURT: Counsel, I'm sorry. I apologize again for  
3 the interruption. Thank you very much for your consideration.  
4 Please proceed.

5 MR. MERINGOLO: So we'll just talk about Jona  
6 Rechnitz, and then we'll wrap it up.

7 Jona Rechnitz is a master manipulator -- lying to our  
8 FBI, the evidence will show, for 13 months, trying to  
9 manipulate Mayor de Blasio, saying he committed crimes with  
10 him. He also manipulated a man by the name of Benjamin  
11 Brafman. That's a big, big lawyer, the biggest lawyer in the  
12 city. He referred Hamlet Peralta -- and I know these are a lot  
13 of names, ladies and gentlemen, maybe -- I ask you if you could  
14 write things down when the evidence comes in -- and he also got  
15 Hamlet Peralta a lawyer, which was Benjamin Brafman. And he  
16 got Philip Banks, who's the chief of the department -- he's  
17 someone that Jeremy and Jona were very friendly with, he was  
18 the chief of the department, but he was not friendly with Jimmy  
19 Grant -- he got him a lawyer, also, which was Benjamin Brafman.  
20 I will cross-examine him on conversations that he had with  
21 Benjamin Brafman literally manipulating him.

22 I will also cross-examine him on conversations that he  
23 had with his father. And his father is a big, powerful man out  
24 in L.A. His father is very, very politically connected, and  
25 his father, on tape, the evidence may show when he was

IB6KGRA3

Opening - Mr. Meringolo

1 cross-examined, had said don't worry, we'll just go to D.C.,  
2 and I will handle it.

3 MS. LONERGAN: Objection, your Honor.

4 THE COURT: Thank you.

5 You can proceed, counsel.

6 MR. MERINGOLO: So what I'm trying to say here,  
7 lastly, is that if you believe Jimmy Grant and Jeremy Reichberg  
8 are friends, you must vote not guilty. If you think --

9 MS. LONERGAN: Objection, your Honor.

10 THE COURT: Thank you.

11 You can proceed, counsel.

12 MR. MERINGOLO: If you believe -- if you don't believe  
13 Jona Rechnitz, and you believe he's lying, then I would  
14 respectfully ask you to vote not guilty. Whatever the official  
15 acts are going to be proposed about the government in this  
16 trial, if they don't meet their burden, I will ask you to vote  
17 not guilty.

18 I thank you very much for giving me your attention  
19 this morning. Today is a great day. You are jurors, which  
20 is -- there are three things you can do for your country,  
21 there's three major things: One, first and foremost, the most  
22 important, you can go to the military; second is you can vote;  
23 and, third, a close third, is that you can swear an oath to be  
24 a juror. It's really the cornerstone of our country that  
25 Mr. Grant, Jimmy Grant, he comes in here presumed innocent

IB6KGRA3

1 until all the evidence is in. And what I said up here, and  
2 whatever I did, and how emotional I got, I apologize if I  
3 offended anybody, I really do, but don't take that against  
4 Jimmy Grant. Please don't. It's the evidence that will  
5 govern. And when the evidence is in, and I come and close up  
6 here, I believe that there will be no other verdict that we  
7 could reach when we look at the law that Judge Woods is going  
8 to instruct you and the evidence, it will be not guilty.

9 Thank you for your time.

10 THE COURT: Good. Thank you very much, counsel, all  
11 of you, for your openings.

12 So, ladies and gentlemen of the jury, it is about  
13 11:43. I'm going to try to take a lunch break around this time  
14 every day. So I'm going to propose that we take our lunch  
15 break now. I think that you've got some food to eat. I'd like  
16 to keep this break relatively short. There is some food  
17 waiting for you in the jury room and some coffee. If you need  
18 to step out to get some more food, please do it very quickly,  
19 so that we can plan to start back up in about half an hour from  
20 now. So we'll plan to start again at 12:15 with our very first  
21 witness. Remember, as I said earlier, at this point in the  
22 case, you have not yet heard any evidence because the parties'  
23 opening statements are not themselves evidence.

24 So, ladies and gentlemen, you're going to hear me say  
25 this many times: During this recess, do not discuss the case

IB6KGRA3

1 amongst yourselves, do not communicate about it with anyone  
2 else, and do no research about the case or anyone involved in  
3 it. I'll see you after our lunch break. Thank you, all.

4 (Luncheon recess)

IB6KGRA3

1 (Jury not present)

2 THE COURT: Thank you. You can be seated.

3 Thank you, counsel, again, for your opening  
4 statements. I appreciate the work that went into all of them.

5 I'd like to take our lunch break now. It should be  
6 relatively brief. Counsel, as you heard me tell the jurors, I  
7 expect to begin again with testimony at 12:15. At that time, I  
8 expect that the government will have its next witness available  
9 to take the stand. I'll ask you to call the witness, to  
10 identify them, him or her, to the jury, so that he or she can  
11 come forward in their presence, but please have your witness  
12 ready.

13 There are, I believe, at least two issues that we  
14 should discuss before the jury comes back in, if I recall  
15 correctly. First, I understand that the NYPD rules issue may  
16 be something that we need to resolve before this witness.

17 I also will want to talk with you about the basis for  
18 my decision on the Bruton issue, which I think will take about  
19 five minutes or so.

20 Is there anything the parties would like to make sure  
21 that we resolve prior to the jury's return?

22 MS. LONERGAN: Your Honor, I hate cutting into the  
23 lunch break, but I'm concerned that in his opening statement,  
24 Mr. Meringolo, on multiple times, misstated the law in one  
25 particular way, which was by saying that if the defendants were

IB6KGRA3

1 friends --

2 THE COURT: Thank you. I hate to interrupt you. I  
3 have a note as a follow-up to the friends issue. I share the  
4 concern. We may need to include some kind of instruction to  
5 the jury to counteract that argument.

6 This is why I advise the parties not to argue the law  
7 in your opening statements.

8 MR. MERINGOLO: Your Honor, I don't believe that the  
9 jury will disregard your instructions to them prior to my  
10 opening statement.

11 THE COURT: Thank you. That's fine.

12 I think that the concern that the government is  
13 articulating, we can take up at a later date, unless the  
14 parties believe we need to take this up now.

15 MS. LONERGAN: Your Honor, we request a curative  
16 instruction now, that this is a misstatement of the law, that  
17 they can both be friends and have engaged in the charged  
18 crimes. We think otherwise it will impact how the jury views  
19 the evidence, because we don't dispute there is, of course,  
20 going to be evidence that they were friends. But right now,  
21 they have been left with the misimpression that if they find  
22 that they're friends, then the verdict must be not guilty.

23 THE COURT: Thank you. That would be -- I look  
24 forward to discussing this issue. I understand the  
25 government's concern.

IB6KGRA3

1           If there is a defense that consists of the following,  
2 friends cannot be guilty of crimes committed together, I need  
3 to see it. I'm concerned because I hear that it may misstate  
4 the law, and I appreciate the government's concern that the  
5 argument that a friendship negates the possibility of  
6 committing a crime with your friend is one that may contaminate  
7 the jury's evaluation of the evidence.

8           I don't know what the basis is for that proposition,  
9 as a matter of law, whether it's in connection with a political  
10 corruption case that friends cannot bribe each other, or engage  
11 in corrupt activity, or in the context of another crime, that a  
12 conspirator selling crack cocaine cannot be guilty of selling  
13 crack because they're friends.

14           So I'm going to need to ask for a proposed text for a  
15 limiting instruction, which I'll review, and we'll evaluate  
16 what it should say. I'm not going to come up with something on  
17 the fly. I'll want to ask the government to propose something  
18 to show it to the defendants, and I'll evaluate the product of  
19 that. I believe that the government has made a reasonable  
20 argument that a bell has been struck that I should do something  
21 to mute, but I would like to see what the proposal is before I  
22 will take a step. And I don't believe that this is of such a  
23 vital nature, that I have to do it without the benefit of the  
24 parties' feedback on the language.

25           MS. NECHELES: Your Honor, we would object to that.

IB6KGRA3

1 My whole opening was about friends, and, in effect, the  
2 government is asking for an instruction that that's wrong. We  
3 are proposing an alternative. We are not saying that friends  
4 cannot be -- Mr. Meringolo engaged in a bit of hyperbole, but  
5 he was -- I think everybody in the courtroom understood that  
6 he's saying they're friends, just like I specifically talked  
7 about they need specific intent to commit a bribe, the jury was  
8 told that, you told it to them, the government can't just ask  
9 for an instruction every time they don't like an argument.  
10 They'll put on their evidence, we'll put on our evidence, and  
11 the Court will instruct the jury. I don't think anybody here  
12 is going to think, or the jurors think, given what you've  
13 already said and what the arguments have been, that just  
14 because you're friends, you can't be --

15 THE COURT: Thank you. I understand. And I, again,  
16 will solicit a form of instruction on this issue.

17 The way that you made this argument, Ms. Necheles, was  
18 meaningfully different in nature from the way in which it was  
19 made by counsel for Defendant Grant. You said that your  
20 defendant pleads guilty to being friends. That is not the same  
21 as saying, if you are friends, you are not guilty, which is the  
22 government's concern.

23 I will solicit a proposed instruction, I'll evaluate  
24 that, and I'll solicit arguments before I provide the  
25 instruction. I understand the concern, and I do not want to

IB6KGRA3

1 unduly tremble what I believe is a reasonable argument by  
2 defendants, but I also don't want to leave the jurors with the  
3 misimpression that friendship is a defense to criminal conduct,  
4 which, I'm afraid, is the reasonable connotation of the  
5 argument made by counsel for Defendant Grant.

6 So, counsel, please propose a limiting instruction.  
7 I'm not saying that I'm going to administer it, but I'm saying  
8 that I will only do so after evaluating the proposal and  
9 considering what adverse effect it might have on the defendants  
10 and their respective cases.

11 Can I take up the other issue; namely, the rules  
12 issue. Is that an issue we need to decide before the next  
13 witness comes to the stand?

14 MS. LONERGAN: Not the very next witness, Judge. We  
15 expect that witness to be fairly short. It will be the second  
16 witness. But we can take a break between the two witnesses to  
17 discuss it.

18 THE COURT: Thank you. I think it would be better for  
19 us to do it before these two witnesses, particularly since the  
20 first witness will be relatively short.

21 MS. NECHELES: Can we ask who the witnesses are, who  
22 the order is?

23 MS. LONERGAN: Your Honor, sorry, we need -- given the  
24 Court's ruling this morning, we actually may slot Massey back  
25 in, and in which case, this witness will be third. We told

IB6KGRA3

1     them, in fact, the first three witnesses about a week ago, but  
2     in some combination, we expect the first three witnesses will  
3     be FBI Special Agent Chapel, potentially retired FBI Agent  
4     Massey, and Police Sergeant Cox.

5             THE COURT: Thank you.

6             MS. NECHELES: Judge, my only concern is, and maybe  
7     the government doesn't understand this, but as soon as they  
8     finish the direct, they're going to expect me to get up and  
9     cross, and so it's helpful for me to know what order the  
10    witnesses will be in a day, so that I can be prepared. I could  
11    have gotten my stuff all together, and we don't have a delay.

12            So to be saying, you know, like, yes, they told us  
13    these are the six, eight witnesses we will be calling, we would  
14    like to know in the morning, at least, what's the order of  
15    people that you're calling. It's not so hard for us to be  
16    asking that.

17            THE COURT: Thank you.

18            Counsel for the United States?

19            MS. LONERGAN: Your Honor, that's fine. We'll do our  
20    best. Clearly, sometimes things come up, like the issue -- an  
21    issue that came up today that has still left the government in  
22    flux a little bit because we have to see who's here. And  
23    sometimes travel plans change. For example, witnesses got  
24    stuck in traffic this morning, which can also change things.  
25    To the extent we can, we will do our best. We are providing

IB6KGRA3

1 the defense with the witnesses we anticipate will take the  
2 stand two days later, that is sufficient time, but we will do  
3 our best in the morning, as much as we can, to give them the  
4 order as well at least for the first few.

5 THE COURT: Thank you.

6 Once you have had the opportunity to sort out the next  
7 few witnesses, please inform the defendants of that.

8 Please provide me with a proposed limiting instruction  
9 with respect to the Bruton issue related to the testimony by  
10 Special Agent Massey. I'd like to see the government's  
11 proposal, and I'd like to receive the feedback by the  
12 defendants with respect to that proposed language.

13 When I come back, I'll expect to have a short  
14 conversation about the NYPD rules issue. And I hope to see a  
15 proposed instruction with respect to the Bruton issue, so we  
16 can move promptly into Agent Massey's testimony, as he is the  
17 second witness.

18 Anything else we should take up before we all take our  
19 short break for the sake of eating something?

20 MS. LONERGAN: Nothing from the government, your  
21 Honor.

22 THE COURT: Thank you.

23 Ms. Necheles?

24 MS. NECHELES: No, your Honor. Thank you.

25 THE COURT: Thank you.

IB6KGRA3

1 Mr. Meringolo?

2 MR. MERINGOLO: No, your Honor. Thank you.

3 THE COURT: Please come back around 12:10, so we can  
4 take up these other issues. Thank you.

5 (Luncheon recess)

6 (Continued on next page)

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IB6TGRA4

1 AFTERNOON SESSION

2 (12:15 p.m.)

3 THE COURT: Thank you all for being back. I would  
4 like to start as promptly as we can.

5 Counsel, first let's talk briefly about the New York  
6 patrol guide issue. Counsel for the United States, could you  
7 make a brief proffer regarding each of the respective rules you  
8 expect to bring in in addition to the two that you identified  
9 in your motion?

10 MS. LONERGAN: Of course, your Honor, one moment.

11 So there's one that's called performance on duty  
12 general, which essentially talks about the rules, general rules  
13 for police officers on duty. One is performance on duty,  
14 prohibited conduct. As the title is, it states what you're not  
15 allowed to do as a police officer on duty. It's not an  
16 exclusive list, these are early in the parole guide as they  
17 start to lay out some rules of police officers' conduct, on and  
18 off duty.

19 There's two sections that go to financial  
20 restrictions, things that are prohibited for officers of the  
21 police department to do that have monetary restrictions, what  
22 they're allowed to invest in, businesses that have -- and how  
23 their duties as police officers affect them financially, which  
24 we also think is relevant here.

25 Then we have an introductory section, which is mission

IB6TGRA4

1 and values of the New York City Police Department, which is a  
2 central statement that is taught to the new recruits,  
3 essentially what they are taught about the mission and values  
4 of the New York City Police Department, and that guides kind of  
5 their whole conduct as police officers.

6 I believe that's all of them, but let me just confirm,  
7 Judge.

8 THE COURT: Thank you. While counsel is confirming  
9 this, Ms. Necheles apart from what I will describe as a  
10 procedural issue, namely the government's failure to identify  
11 these issues in their motion previously, why is the analysis  
12 with respect to these portions of the rules any different than  
13 what I engaged in with respect to the ones that were identified  
14 timely?

15 MS. NECHELES: I don't believe these are coming in for  
16 state of mind. I think that the government had also put as an  
17 exhibit about activities at parades or wanting to wear a  
18 uniform and the danger of confusion. These are all rules which  
19 the government will argue were broken, and they don't really go  
20 to the issue of whether there was bribery.

21 I understand fully the rules about what gifts you are  
22 allowed to accept, because that would go to the issue of  
23 whether there was bribery, but other rules about were you --  
24 should you have been wearing your uniform here when you were  
25 there, what relevance does that have other than to say that

IB6TGRA4

1 they were doing something wrong in this case?

2 THE COURT: Thank you. Counsel for Mr. Grant?

3 MR. MERINGOLO: Your Honor, we object to this just  
4 because we think that it would really prejudice Mr. Grant  
5 having continuous parole guide violations put in and be so  
6 cumulative that the jury may infer that this was actually a  
7 federal crime. So we object based on that.

8 THE COURT: Counsel for the United States, why is this  
9 evidence to be introduced for the same reasons as the two rules  
10 that you identified in your motion?

11 MS. LONERGAN: Your Honor, let me also be clear,  
12 there's also a couple of other patrol guide sections I think.  
13 Ms. Necheles referred to one of them that goes to desk  
14 appearance tickets and suspended licenses, those are issues  
15 that will be issues of fact in this case. There will be  
16 evidence -- or we anticipate that there will be evidence that  
17 Reichberg had new people who were arrested for suspended  
18 license offenses and got other members of the police department  
19 to request desk appearance tickets on their behalf.

20 So we think that the rules related to -- it helps  
21 explain the officers' conduct also who acted in those instances  
22 because they will say, for example, here is when you can and  
23 can't issue -- here's my understanding of the rules of when you  
24 can and can't issue desk appearance tickets. Are those rules  
25 written down anywhere? Yes, they're written down in the patrol

IB6TGRA4

1 guide. And that will help to explain that the witness's own  
2 conduct is that they believed that they were, for example, in  
3 saying I'm not going to issue this person a desk appearance  
4 ticket, despite requests to the contrary, that they were acting  
5 in accordance with what they understood the rules to be of the  
6 police department.

7 Again, we think all of this goes to -- this is not  
8 about a violation of the patrol guide, and we're happy to have  
9 as many limiting instructions at whatever time is necessary,  
10 but the point is that when you're trying to think about --  
11 because there's been all sorts of arguments in the opening --

12 THE COURT: Thank you, I think I heard enough. I  
13 understand the nature and focus of this additional set of  
14 rules, as does the defense. I wish this information had been  
15 highlighted in the original motion in limine with respect to  
16 patrol guide evidence. It's disappointing that it was not.  
17 However, I believe that the analysis that I conducted in  
18 connection with the prior motion in limine bears out, too, with  
19 respect to this additional patrol guide evidence.

20 I won't restate all of the determinations that I made  
21 in connection with the motion in limine regarding this patrol  
22 guide evidence, namely my balancing of the relevant factors  
23 under Rule 403. There I held that given particular Mr. Grant's  
24 expressed intent to present a defense that's premised in part  
25 on the argument that the conduct -- that at least certain of

IB6TGRA4

1 the acts engaged in were customary police practices. I believe  
2 the evidence had particular significance with respect to  
3 Mr. Grant's criminal intent. I believe that the analysis of  
4 the issue presented by the United States in its original motion  
5 was persuasive, and the additional rules that are proposed to  
6 be introduced here I believe are properly considered in light  
7 of that same set of arguments.

8 Balancing the factors under Rule 403, I do not believe  
9 that the possible prejudicial effect of this evidence will  
10 overvalue its potential probative value. As before, I believe  
11 it's important for me to provide limiting instructions as it is  
12 introduced and also at the close of evidence. I don't believe  
13 that I have seen a clear proposed instruction with respect to  
14 this evidence.

15 Counsel, please correct me if I'm wrong. I would be  
16 happy to propose language now based on Judge Wood's limiting  
17 instruction in *Skelos* with respect to similar evidence  
18 regarding, I believe there, state ethics laws.

19 MS. LONERGAN: Your Honor, I believe in the original  
20 brief that we quoted the language from both *Fumo* and *Skelos* and  
21 proposed that the Court adopt something along those lines.

22 THE COURT: Thank you. I propose to read the  
23 following at each instance when the patrol guide evidence is  
24 referenced, I would include a full instruction at the end of  
25 the case. The instruction would read as follows:

IB6TGRA4

1           "You are about to hear testimony regarding the  
2 provisions of the New York Patrol Guide that apply to members  
3 of the New York Police Department. Neither defendant is on  
4 trial for any violation of the New York patrol guide. It is  
5 not a law; it is an internal guidance document used by the  
6 NYPD. You may not find either defendant guilty on any count in  
7 this case merely because you believe that the defendant you are  
8 considering may have acted in a way that was not consistent  
9 with the New York patrol guide. However, you may consider the  
10 evidence regarding is the training Mr. Grant received with  
11 respect to the New York patrol guide to extent that you find it  
12 sheds light on whether or not Mr. Grant acted with fraudulent  
13 or corrupt intent."

14           Does that capture the purpose for which the evidence  
15 would be used?

16           MS. LONERGAN: One moment, your Honor.

17           MS. NECHELES: Sorry, could you just read that again?

18           THE COURT: I would be happy to.

19           "You're about to hear testimony regarding the  
20 provisions of the New York patrol guide that apply to members  
21 of the New York Police Department. Neither defendant is on  
22 trial for any violation of the New York patrol guide. It is  
23 not a law; it is an internal guidance document used by the  
24 NYPD. You may not find either defendant guilty on any count in  
25 this case merely because you believe that the defendant are you

IB6TGRA4

1 considering may have acted in a way that was not consistent  
2 with the New York patrol guide. However, you may consider any  
3 evidence regarding training Mr. Grant received with respect to  
4 the New York patrol guide to the extent that you find it sheds  
5 light on whether or not Mr. Grant acted with fraudulent or  
6 corrupt intent."

7 Counsel, your view regarding that proposed  
8 instruction?

9 MS. NECHELES: Your Honor, I'm a little baffled on how  
10 things like general principles or what you're allude to wear to  
11 parade goes to Mr. Grant's corrupt intent. And I also think  
12 that to use that phrase, "corrupt intent," is to suggest that  
13 this might be relevant to it. I think that if your Honor is  
14 inclined to give that instruction, I would ask that you just do  
15 it with respect to his intent and not any sort of a suggestion  
16 of corruption.

17 I think, your Honor, also on behalf of Mr. Reichberg,  
18 at this point there is proposed so much evidence that will come  
19 in with special limiting instructions that I don't believe any  
20 juror could keep it straight.

21 So again, we object to this evidence that's just not  
22 at all admissible against Mr. Reichberg, has nothing to do with  
23 it, but I don't know how a jury would be able to keep all of  
24 this stuff that is going to be coming in straight.

25 THE COURT: Thank you. Do you have any comments

IB6TGRA4

1 regarding the proposed language, other than the particular  
2 comment to change the end language, "to the extent you find it  
3 sheds light on Mr. Grant's intent."

4 MS. NECHELES: I have none.

5 THE COURT: Thank you.

6 Mr. Grant, do you have any additional comments  
7 regarding the proposed limiting instruction?

8 MR. MERINGOLO: Your Honor, for the record, we object  
9 in its entirety.

10 THE COURT: Do you have any comments?

11 MR. MERINGOLO: No comments.

12 THE COURT: Fine. Counsel for the United States, any  
13 concerns regarding the proposed language?

14 MR. BELL: Your Honor, I think it should be called the  
15 New York City Police patrol guide.

16 THE COURT: The New York State?

17 MS. LONERGAN: New York City patrol guide or NYPD  
18 patrol guide. I think either of those things would be clearer,  
19 because it just applied to New York City Police Department.  
20 For example, it doesn't apply to the New York State Police or  
21 other local police.

22 THE COURT: So NYPD patrol guide.

23 MS. LONERGAN: Yes, that would be helpful. Thank you,  
24 your Honor.

25 THE COURT: Thank you. Anything else?

IB6TGRA4

1 Counsel, would you tell me when you wish me to  
2 administer this instruction?

3 MS. LONERGAN: Your Honor, the first patrol guide  
4 evidence will come in through I believe our third witness, who  
5 is going to be Sergeant Cox.

6 THE COURT: Counsel, I would like to proceed using an  
7 amount of time here that I would like to be able to move along.

8 Anything else that we could talk about before we bring  
9 in the jury?

10 MS. LONERGAN: Your Honor, are we going to discuss the  
11 limiting instruction with respect to the evidence from Massey  
12 or are we going to wait? Because he'll be second.

13 THE COURT: If you could propose it to me, that would  
14 be helpful.

15 MS. LONERGAN: Your Honor, we're happy with as robust  
16 a limiting instruction as the Court thinks is appropriate, but  
17 what we propose is something along the lines of the evidence  
18 that you are about to hear or that you just heard about the  
19 statements that Grant made to Agent Massey are to be considered  
20 only against defendant Grant. You are not to consider those  
21 statements for any reason against defendant Reichberg for any  
22 reason or any purpose against defendant Reichberg.

23 THE COURT: Thank you. Do you have that proposed  
24 language and have you reviewed it in hard copy and have you  
25 reviewed it with counsel for defendants?

IB6TGRA4

1 MS. LONERGAN: No, your Honor, I apologize. By the  
2 time we got out of the courtroom with the number of people and  
3 got back down to our office and back up here, we didn't have  
4 time to print it out, but we're happy to write it out if that  
5 would be helpful.

6 THE COURT: Thank you. If you would, please do. Or  
7 if you could tell me again and I will type it as you say it.

8 MS. LONERGAN: Whatever the Court prefers.

9 THE COURT: Do you have a hard copy, and hand it  
10 forward?

11 MS. LONERGAN: I could handwrite it and hand it  
12 forward.

13 THE COURT: Counsel for each of the defendants, as  
14 counsel is doing that, could I ask you what your view is  
15 regarding the proposed language offered by the United States.

16 MS. NECHELES: Your Honor, I think this is exactly  
17 what the Supreme Court said that is impossible for jurors to  
18 do. So I object to this whole process. I think that the  
19 Supreme Court very clearly said that when a defendant's name is  
20 in the statement that this is impossible for all the jurors to  
21 put that out of mind. This is not a false exculpatory that  
22 they are putting in, it's statements that clearly inculcates  
23 him. So I think that this instruction is impossible, and I  
24 will have to be cross-examining this witness on what else was  
25 said and what really was said here.

IB6TGRA4

1           So for you to be saying to the jury you can't consider  
2           it for any purpose, but at the same time I have to treat the  
3           reality, which of course it's coming in, they're going to be  
4           hearing that he said that something was improper with  
5           Mr. Reichberg, I think that --

6           THE COURT: I'm sorry, what are you referring to? You  
7           may be referring to a different set of comments than I believe  
8           we're talking about.

9           MS. NECHELES: Talking about the Massey.

10          THE COURT: What's the improper statement? You opened  
11          on their friendship. Statements one and two relate to their  
12          friendship. What's improper about that?

13          MS. NECHELES: I'm not so worried about those, they're  
14          cumulative.

15          THE COURT: Counsel, those are the only two in which  
16          his name is used.

17          MS. NECHELES: No, the final statement also says --  
18          his name is explicitly used, and there's four statements that  
19          they are putting in. On the fourth his name is also used, and  
20          he says that -- according to him he says that Mr. Grant said  
21          that he is aware if he accepted anything of value from  
22          Reichberg without paying for it he would be in serious trouble  
23          with the NYPD.

24          THE COURT: Thank you very much.

25          MS. NECHELES: And in saying that, he is saying that

IB6TGRA4

1 Mr. Grant said it was improper to accept things of value from  
2 Mr. Reichberg. And that is obviously at the heart of this case  
3 and inculpatory and facially inculpatory. So I will have to  
4 cross-examine on this.

5 THE COURT: Thank you. I will, again, provide you  
6 with a further analysis of that statement, but I do want to use  
7 the jury's time efficiently.

8 Counsel for Mr. Reichberg, I take it that you don't  
9 want to provide additional comments regarding the scope of the  
10 limiting instruction. I ruled on the issue, so the question  
11 now is whether you want to rest on the argument that this is  
12 clearly inculpatory and accord to the government's case, or if  
13 you would like to participate in the process by suggesting  
14 limiting instructions that may be more valuable.

15 So do I take it that you don't want to engage at all  
16 in the process of framing a limiting instruction?

17 MS. NECHELES: I think the government has been saying  
18 that you cannot consider this at all with respect to  
19 Mr. Reichberg, and that is the correct statement of the law,  
20 although the Supreme Court said that's impossible for jurors to  
21 do, but I guess that's the best that we can do since we're  
22 allowing it in.

23 THE COURT: Thank you.

24 MS. LONERGAN: I also want to note we moved on four  
25 statements and we were going to restrict what we did to those

IB6TGRA4

1 four statements. To extent that defense counsel wants to cross  
2 the witness on the entirety of the interview, we think it will  
3 look like we are not being entirely truthful with the jury if  
4 we don't elicit the entirety of the interview. We were not  
5 intending to, but if it's going to come in on cross we think  
6 that we should be able to put in the entirety of the interview  
7 on direct. Again, I don't think that there's -- the statements  
8 that we have -- we don't think there's any issues with respect  
9 to any of the statements. We're also happy to contain  
10 ourselves with the four statements we briefed if we are not  
11 going to go outside the scope of that on cross.

12 THE COURT: Thank you. I'm not going to comment on  
13 the scope of the cross at this time, nor am I going to endorse  
14 the government going beyond the scope of these four statements.  
15 You will have the opportunity on redirect if you would like to  
16 raise any additional issues.

17 The proposal here is, quote, "The evidence you just  
18 heard about Grant's statements to Agent Massey may only be  
19 considered by you as against defendant Grant. It may not be  
20 considered by you for any purpose against defendant Reichberg."

21 Counsel for defendants, is there any additional  
22 language that you would like to propose that I add to this in  
23 order to provide as clear a limiting instruction as I can in  
24 this context? Counsel for Mr. Reichberg?

25 MS. NECHELES: No, your Honor.

IB6TGRA4

1 THE COURT: Thank you. Counsel for Mr. Grant?

2 MR. MERINGOLO: No, your Honor.

3 THE COURT: So let's begin. I will administer this  
4 statement and I will comment further on the Bruton evidence.

5 Counsel, we'll have a further conversation about this,  
6 but I really do want to be more mindful of the jury's time  
7 going forward, and we'll have to figure out a way to focus  
8 ourselves during these breaks to make sure that we are as  
9 efficient as possible. I may ask you to come in earlier in the  
10 mornings because the parties have a number of issues that they  
11 want to entertain.

12 Good. Is there anything else that we should take up  
13 now before we bring back in the jury?

14 MR. BELL: One moment, your Honor.

15 (Pause)

16 MS. LONERGAN: Your Honor, I really don't want to  
17 waste any more of the jury's time, but with respect to Agent  
18 Massey, given the representations made by defense counsel, we  
19 need to elicit the entirety of the interview otherwise it will  
20 severely prejudice the government because it will look like we  
21 are being less than fully candid with this witness. And we do  
22 not think that -- the interview is fairly short. We do not  
23 think that any statements raised raise any additional Bruton  
24 concerns. And if the Court is going to preclude us from doing  
25 so, we just need to understand the basis for the Court's

IB6TGRA4

1 ruling.

2 THE COURT: Thank you. What's the basis for it to  
3 come in at the outset, counsel?

4 MS. LONERGAN: Your Honor, it's statements from the  
5 defendant, so it's not the hearsay issue. With respect to --  
6 so those would be the reasons initially is they're all  
7 statements from the defendant, so they come in on that ground.

8 And they're relevant, your Honor, because it's an  
9 entire interview with the defendant. We thought that we could  
10 cut it to bring it to the most critical portion of that  
11 interview, but again, we do not want this witness or the  
12 government's presentation of evidence to look like we are being  
13 less than fully candid with what happened in that interview.  
14 And we are concerned by limiting our presentation on direct but  
15 not similarly limiting cross-examination, that is exactly the  
16 impression that will be formed in the jury.

17 THE COURT: Thank you. Counsel, can I say one thing  
18 to the United States: The fact that we are wasting the jury's  
19 time right now is a consequence of your representation to the  
20 Court and to the defendants at a prior conference where you  
21 said that you would bring in no statements by co-defendants in  
22 this case. That was the representation made by the United  
23 States. It was very clear. There is no reason for us to be  
24 talking about this issue while the jury is in the jury room.  
25 The reason why this is happening is because of that

IB6TGRA4

1 representation by the United States, to be very clear.

2           So with respect to limitations on this testimony,  
3 please understand that I have declined to take up the  
4 procedural issue raised by defendants, namely the request that  
5 I bar this testimony entirely as a result of the government's  
6 profound failure to identify this issue earlier, and indeed,  
7 the government's choice to make a representation to the Court  
8 and the defendants that appears not to be fully correct. The  
9 government asserted to the Court and to the defendants that no  
10 co-defendant statements would come in in this case. That is  
11 why I did not consider Bruton issues months ago in connection  
12 with the early round of motions.

13           So I understand the government's consternation about  
14 the difficulty that they do not know exactly what is going to  
15 happen with respect to these issues at this time. Frankly, at  
16 the same time, that is why these issues are briefed and raised  
17 earlier and why the Court and the defendants rely on the  
18 government to provide truthful and complete statements  
19 regarding their expectations regarding co-defendant statements  
20 at the time.

21           So I apologize that this is not quite so orderly as it  
22 might have been, but unfortunately, from my perspective, much  
23 of this grows from the representation that Ms. Necheles quoted  
24 from the earlier conference regarding the absence of  
25 co-defendant statements in this case.

IB6TGRA4

1 MS. LONERGAN: Your Honor, the question that the Court  
2 posed that led to the government's answer at that conference  
3 was whether there were going to be any post-arrest statements  
4 by the defendants, which this is not.

5 And we produced --

6 THE COURT: Counsel, this is in the context of a  
7 specific discussion about Bruton. That was the context of the  
8 defendant's motion for severance, not just post-arrest  
9 statements, as I recall it. I don't remember the defendants  
10 asking to sever the trial because of the prospect of  
11 post-arrest statements alone. In any event, it's unfortunate  
12 that we're doing this now.

13 Counsel for defendants, what is the -- is there any  
14 concern regarding having the United States bring this  
15 information out on direct examination rather than on redirect  
16 following your cross?

17 MS. NECHELES: Yes, your Honor, it's the same Bruton  
18 issue, now they want to make it more of a Bruton issue. The  
19 only thing that I will be cross-examining -- probably I will  
20 only be eliciting a small part of the additional part that I  
21 think is misleading to have left out.

22 And in addition, I will be attacking the idea that  
23 this was even said by Mr. Grant, because I don't believe that  
24 that's true. So that would be my cross, it will not be really  
25 bringing out the whole statement.

IB6TGRA4

1 THE COURT: Thank you.

2 Counsel for Mr. Grant?

3 MR. MERINGOLO: We concur with Ms. Necheles.

4 THE COURT: Thank you.

5 Counsel for the United States, I'm sorry, I'm going to  
6 ask you to limit yourselves to the issues that you identified  
7 earlier. Let me guide you, counsel, to consider, please,  
8 providing the Court and your adversaries with complete  
9 information earlier in the process in order for the process to  
10 be streamlined and effective.

11 To the extent that this is an issue that we might have  
12 come to a different conclusion had you chosen to provide full  
13 information to defendants and the Court in an earlier stage,  
14 that is something that we cannot recreate at this point.

15 Unfortunately, I cannot evaluate at this point what  
16 every other statement in the Massey declaration is. I have  
17 looked at the four. I made a decision regarding the four, and  
18 I'm not prepared now to make a decision that everything else in  
19 that statement is not problematic, which is what I think you're  
20 asking me to do by asking me to endorse the introduction of  
21 that entire statement at this point.

22 MS. LONERGAN: Your Honor, we understand. We will  
23 abide by the Court's ruling. We will endeavor, as the Court  
24 said, to raise all the issues as expediently as possible so the  
25 issues don't come up again.

IB6TGRA4

1           So with the Court's indulgence, I will need 30 seconds  
2 to speak to the witness before we put him on the witness stand  
3 just to make sure that he does not on direct examination go  
4 outside the bounds of the Court's ruling. Or we can call him  
5 later in the order, whichever the Court would prefer.

6           THE COURT: Thank you. Let's begin. Counsel, I'm  
7 ready to bring in the jury. Are you all prepared?

8           MR. BELL: We are prepared, your Honor, I will note  
9 that we handed your Honor a proposed curative instruction,  
10 which I also shared with the defense.

11          THE COURT: Good. I will take a look at this. I have  
12 the proposed limiting instruction regarding "friendship."

13          MS. NECHELES: I am actually inviting a slightly  
14 different one. They got it to me in the break as well.

15          I know your Honor doesn't want to take this up now,  
16 but perhaps we could talk about the lunch break, which is very  
17 difficult on the lawyers because I know we have very little  
18 time.

19          THE COURT: It would be easy if everything was done in  
20 advance. That's not happening here, and I need to corral the  
21 parties. That's something that I will take on going forward.

22          Anything else, Mr. Grant?

23          MR. MERINGOLO: No.

24          THE COURT: Thank you. Let's proceed.

25          (Jury present)

IB6TGRA4

Chapel - Direct

1 THE COURT: Thank you very much, ladies and gentlemen,  
2 for coming back just after that break, and I will try to keep  
3 them a little shorter going forward. So thank you for your  
4 patience.

5 Counsel for the United States, I would like to ask you  
6 to please call your next witness.

7 MR. BELL: Thank you, your Honor, the government calls  
8 FBI Supervisory Special Agent Tim Chapel.

9 THE COURT: Thank you.

10 TIMOTHY CHAPEL,

11 called as a witness by the Government,

12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. BELL:

15 Q. Good afternoon, Special Agent Chapel.

16 Where do you work?

17 A. Federal Bureau of Investigation.

18 Q. How long have you been with the FBI?

19 A. Approximately nine years.

20 Q. What's your current job there?

21 A. Supervisory special agent down in FBI headquarters.

22 Q. And what do you do as a supervisory special agent at FBI  
23 headquarters now?

24 A. Currently assigned to weapons of mass destruction  
25 directory, nuclear and radiological weapons.

IB6TGRA4

Chapel - Direct

1 Q. How long have you had that job?

2 A. Approximately 16 months.

3 Q. Prior to your work as a supervisory special agent involved  
4 with that subject matter, what did you do with the FBI?

5 A. I was assigned to health care fraud in the New York field  
6 office and white collar crimes unit.

7 Q. What was your title at the time?

8 A. Special agent.

9 Q. What were your duties and responsibilities as a special  
10 agent?

11 A. I was responsible for investigating health care fraud,  
12 crimes relating to Medicaid, Medicare, and doctors, pills,  
13 stuff, anything associated with health care.

14 Q. As a special agent with the New York field office, did you  
15 participate in arrests?

16 A. I did.

17 Q. Did you also participate in the execution of authorized  
18 searches?

19 A. I did.

20 Q. So I want to direct your attention to the morning of  
21 June 20 of 2016. Do you remember participating in a law  
22 enforcement operation that day?

23 A. I do.

24 Q. And what was the nature of that operation?

25 A. I was assigned to assist in the arrest of Jeremy Reichberg

IB6TGRA4

Chapel - Direct

1 and the search at his residence after the arrest.

2 Q. You mentioned that this was supposed to happen at  
3 Mr. Reichberg's residence. Where generally was the residence  
4 located?

5 A. 56th Street in Brooklyn.

6 Q. Now about how many FBI agents were involved in this law  
7 enforcement operation?

8 A. There's approximately six for the arrest and then  
9 approximately another 10 to 15 for the actual search of the  
10 residence.

11 Q. What did you understand your particular role to be that  
12 morning, sir?

13 A. My morning was I would be one of the agents assisting the  
14 arrest team to go up to front door and make contact with  
15 Mr. Reichberg, take him into custody, and then I would search  
16 the residence for a protective sweep before the rest of the  
17 agents came in to execute the search warrant.

18 Q. What time did the operation begin?

19 A. Approximately 6:00 a.m.

20 Q. Why did it begin so early?

21 A. Typically FBI federal law enforcement do that time for our  
22 safety. We typically catch people asleep. It's not a  
23 nighttime operation. It also makes it easier for court process  
24 as well.

25 Q. Now directing your attention to that morning, what

IB6TGRA4

Chapel - Direct

1 happened, Special Agent Chapel, as you approached

2 Mr. Reichberg's home on 56th Street?

3 A. As we approached the front door, the door opened, and  
4 Mr. Reichberg greeted us at the front door fully dressed in his  
5 clothing. Just greeted us right at the front door, opened it  
6 as soon as we kind of stepped on the front steps.

7 Q. Were you surprised or concerned by this at all?

8 MS. NECHELES: Objection.

9 THE COURT: Thank you. You can proceed.

10 A. I was surprised. Typically when we're coming up to a front  
11 door at 6:00 a.m. we're not greeted by the subject that we're  
12 going to arrest.

13 Q. And what was Mr. Reichberg's demeanor upon your meeting him  
14 at the door?

15 MS. NECHELES: Objection.

16 THE COURT: You can answer the question.

17 A. He was not surprised. I think I was more surprised than he  
18 was. He had a look that he was expecting us; wasn't surprised  
19 to see the FBI many coming to his residence at 6:00 a.m.

20 Q. You mentioned Mr. Reichberg was fully dressed. Do you  
21 recall how he was dressed?

22 A. He was dressed in I would say his cultural clothing, full  
23 jacket, ready to go outside for the day.

24 Q. So what happened after you encountered Mr. Reichberg at the  
25 door?

IB6TGRA4

Chapel - Direct

1 A. Once he was taken into custody without incident, we  
2 proceeded to go inside the residence and make a protective  
3 sweep of the residence to make sure that other people in there  
4 aren't there to -- they're aware that we're there and they're  
5 not going to hurt us.

6 Q. You mentioned something called a protective sweep. What  
7 does that involve?

8 A. Basically going room to room, clearing each room to make  
9 sure that no one is there; if they're asleep, they're not lying  
10 in wait for us so that they won't surprise us so we can do our  
11 job function that day.

12 Q. Did you enter the house in order to do so?

13 A. I did.

14 Q. How would you describe the house?

15 A. It was a large residence, multilevel.

16 Q. You described the house as being multilevel. Was there an  
17 upstairs?

18 A. There was.

19 Q. Was there a basement?

20 A. There was.

21 Q. So what did you do once you entered the home as part of  
22 that protective sweep?

23 A. My responsibility was I cleared rooms on the first floor  
24 and then proceeded up to the second floor living area.

25 Q. When you got up to the second floor living area, where did

IB6TGRA4

Chapel - Direct

1 you go and what did you do?

2 A. I went to a couple of different bedrooms, came in contact  
3 with two gentleman who were asleep at the time, announced  
4 myself and other agents, identified ourselves as law  
5 enforcement, FBI, we were also wearing coats, advised them that  
6 we're here, they need to wake up and get dressed and come  
7 downstairs, we had a search warrant for the residence.

8 Q. At the time that you met these two individuals -- perhaps  
9 it makes sense to take them one at a time, but were they  
10 dressed?

11 A. They were not.

12 Q. Now after you informed these gentlemen of your presence,  
13 the reason for that presence, what did you do?

14 A. Did a quick search of the room to make sure there was no  
15 weapons that they had access to, allowed them to get dressed  
16 within the rooms, and advised them to come downstairs.

17 Q. What did you do after you concluded the part of protective  
18 sweep that involved the second floor living area?

19 A. I then proceeded downstairs to the main living area,  
20 kitchen area, dining room of the residence.

21 Q. Was there a time when you saw the two individuals whom you  
22 had seen upstairs again?

23 A. Yes.

24 Q. About how far into the search would you say this was?

25 A. Approximately 30 to 40 minutes after I entered the

IB6TGRA4

Chapel - Direct

1 residence.

2 Q. And can you tell us under what circumstances you saw each  
3 of these individuals, and where you were?

4 A. I was in a separate room a little distance away from the  
5 front entryway, I saw the older gentleman, I equate to a  
6 potential grandfather, something, fully dressed, come down and  
7 exit the residents. There was other agents there that didn't  
8 stop him. I tried to get to him, knowing -- stop him and  
9 search him before he was able to exit. By the time I got to  
10 the front of the house he had gone around the corner and I  
11 didn't see him.

12 Q. What would the purpose of stopping and searching the  
13 individual have been?

14 A. To make sure they're not taking anything related to the  
15 search warrant or any contraband out from the residence that  
16 they're not supposed to have.

17 Q. How about the second individual?

18 A. A short time after the subject came down the stairs and I  
19 stopped him at the entryway and explained I needed to search  
20 him before he could exit the residence.

21 Q. You mentioned the first individual down the stairs was an  
22 older, potentially grandfatherly gentleman. How old did the  
23 second gentleman appear to be?

24 A. I would say he was in his mid-30s.

25 Q. And how was he dressed when he came down the steps?

IB6TGRA4

Chapel - Direct

1 A. He was dressed in his full cultural clothing, heavy jacket,  
2 vest, hat, multiple layers of clothing.

3 Q. Did you have an interaction with the second individual?

4 A. I did.

5 Q. And how did that interaction begin?

6 A. I asked him if he had anything on him that related to the  
7 search warrant, any items on him that I needed to know about.  
8 He understood that I needed to search him but he didn't confirm  
9 or deny that. I then asked him more questions:

10 Do you have anything on you that I need to know about?

11 And he stated: Just stuff.

12 Q. How was his demeanor as you were engaging in this  
13 interaction?

14 A. He was extremely nervous.

15 Q. How you could tell he was nervous?

16 A. He was fidgety. He started to put his hands in his  
17 pockets. I advised him to keep his hands out of his pockets,  
18 not knowing what was in his pockets.

19 I continued question him: What is on you? What is on  
20 your person? He wouldn't answer me.

21 MS. NECHELES: Objection, your Honor.

22 THE COURT: Thank you. You can continue.

23 Q. Go ahead, sir.

24 A. Continued to be fidgety, continued to put his hands in his  
25 pockets when I asked him multiple times to take them out.

IB6TGRA4

Chapel - Direct

1 Q. What happened then?

2 A. For my officer safety and officer safety I didn't know what  
3 was in his pockets, so I asked him to take his hands out of his  
4 pockets and put them on top of his head. I then conducted a  
5 pat of his outer clothing to see what he was digging for in his  
6 pocket.

7 Q. Did the pat that you performed on the younger gentlemen's  
8 exterior reveal anything?

9 A. It did.

10 Q. What did you find?

11 A. I felt a large bulge in his pocket. As I went in to  
12 retrieve the item, I retrieved multiple items of business  
13 cards, cell phones. As I continued to go through, after  
14 finding more things I found more items such as thumb drives,  
15 CDs, more cell phones, documents, papers.

16 Q. Did you have a discussion with the individual concerning  
17 these items?

18 A. I did.

19 Q. What, if anything, did you ask him and what did he tell  
20 you?

21 A. I asked him --

22 MS. NECHELES: Objection to hearsay.

23 THE COURT: Thank you. Sustained.

24 MR. BELL: Your Honor, co-conspirator statements.

25 THE COURT: Thank you. Could you come up?

IB6TGRA4

Chapel - Direct

1 (At sidebar)

2 MS. NECHELES: Your Honor, this is hearsay. Now  
3 they're saying it's a co-conspirator statement, but your Honor  
4 instructed the government to give a list of co-conspirators and  
5 this person is not on the list of co-conspirators.

6 THE COURT: Thank you. I have the bill of particulars  
7 here.

8 MR. BELL: Your Honor, you asked us to give a bill of  
9 particulars with respect to the bribery and honest services  
10 offenses, of which this does not relate.

11 I also say, in the alternative, this comes in as a  
12 statement against penal interest.

13 MS. NECHELES: I don't believe that's true. It's a  
14 false exculpatory statement, that's not a statement against  
15 penal interest. And in any case, it's an answer to police  
16 interrogation and raises Crawford issues.

17 MR. BELL: It's not a false exculpatory statement,  
18 it's an inculpatory statement. He says he has taken the things  
19 because his brother told him to. At this point he's been  
20 surrounded by the FBI, he's visibly nervous as a result of  
21 that, which further undercuts the false exculpatory rationale.

22 MS. NECHELES: They're calling this witness, let them  
23 elicit from the witness what he said.

24 THE COURT: Thank you. I will sustain the objection  
25 at this point.

IB6TGRA4

Chapel - Direct

1 Counsel, a couple of questions, you say he's a  
2 co-conspirator. What is the basis for that?

3 MR. BELL: The proffer I'm going to offer is that the  
4 individual is Moshe Reichberg, Jeremy Reichberg's brother. He  
5 had been given these items hours earlier and told to hold them  
6 by a nervous Jeremy Reichberg. Jeremy Reichberg is then  
7 arrested, the brother is aware that the FBI is there, and  
8 there's an understanding at this point of why he has to take  
9 these out, because they are here to search the place, which Tim  
10 Chapel told them they're there to do.

11 MS. NECHELES: And I also note it can't be in  
12 furtherance of a conspiracy because he's already been caught.

13 THE COURT: Thank you.

14 MR. BELL: At bottom, your Honor, we're not offering  
15 this for the truth, so is it's not a hearsay statement in any  
16 event.

17 THE COURT: What's the specific statement and why is  
18 it not being offered for the truth?

19 MR. BELL: One moment, please.

20 (Pause)

21 MR. BELL: Fine, we won't do it, your Honor.

22 THE COURT: Thank you. Objection sustained.

23 (Continued on next page)  
24  
25

IB6TGRA4

Chapel - Direct

1 (In open court)

2 MR. BELL: I may proceed, your Honor?

3 THE COURT: Thank you. Sorry for interrupting.

4 Please do.

5 MR. BELL: Thank you very much.

6 BY MR. BELL:

7 Q. Special Agent Chapel, without giving me an answer to this  
8 question, what question, if any, did you ask Mr. -- the  
9 individual there about the providence the origins of these  
10 items?

11 A. I asked him who they belonged to.

12 Q. And without giving me an answer to that question, did  
13 Mr. -- did the individual -- well, what was his demeanor when  
14 you asked him?

15 A. He was a little nervous, still very nervous about the  
16 questioning.

17 Q. Was there a point at which the individual identified  
18 himself to you?

19 A. Yes.

20 Q. Who did he identify himself as?

21 A. Moshe Reichberg.

22 Q. Was there a point at which he identified his relationship  
23 to Jeremy Reichberg?

24 A. Yes.

25 Q. How did he identify himself?

IB6TGRA4

Chapel - Direct

1 A. He stated he was his brother.

2 MR. BELL: One moment, please.

3 THE COURT: Thank you, please take your time.

4 Q. Now you mentioned that you recovered from Moshe Reichberg's  
5 person a number of items. Were these items all in one place on  
6 his person or in several different places?

7 A. Multiple pockets on his person.

8 Q. You mentioned that you recovered business cards, electronic  
9 devices and DVDs?

10 A. Yes, sir.

11 Q. What did you do with those various business cards, devices  
12 and DVDs?

13 A. They were collected for evidence.

14 Q. So what I would like to do is show you a number of physical  
15 exhibits, which I will hand up to you in a number of rounds.

16 What I would like to do first is bring you what's been  
17 marked for identification as Government Exhibit 501 through  
18 504, 533, and 1619A and 1620A.

19 May I approach, your Honor?

20 THE COURT: Please do.

21 MR. BELL: Thank you.

22 Q. Mr. Chapel, are you familiar with these items?

23 A. I am.

24 Q. Have you gotten to review and look over these items prior  
25 to your testimony today?

IB6TGRA4

Chapel - Direct

1 A. Yes, I have.

2 Q. How did you originally become familiar with these items?

3 A. These are the items that were taken off of Moshe  
4 Reichberg's person.

5 Q. So what I would like to do, Special Agent Chapel, if you  
6 will indulge me, as to each of 501, 502, 503, 504 and 533, is  
7 it your testimony that each of those was a device removed from  
8 the person of Moshe Reichberg by you?

9 A. Yes, sir, it is.

10 Q. I would now like to direct your attention to Government  
11 Exhibits 1619A and 1620A.

12 A. Yes, sir.

13 Q. Special Agent Chapel, as to Government Exhibit 1619A and  
14 1620A, are these also electronic devices recovered from  
15 Mr. Reichberg's person by you?

16 A. Yes, they were.

17 Q. I now want to direct your attention to Government  
18 Exhibit 1615A. I will ask you to open this, please.

19 MR. BELL: I will note for the record, with the  
20 Court's permission, that Special Agent Chapel has opened the  
21 labeled Redweld, which is the exhibit, and has removed a number  
22 of discrete, what appear to be business cards.

23 Q. Is it correct that those are business cards, Special Agent  
24 Chapel?

25 A. Yes, sir, they are.

IB6TGRA4

Chapel - Direct

1 Q. And are these business cards that you yourself bagged  
2 together?

3 A. Yes, sir.

4 Q. Have you gotten the opportunity to review those cards prior  
5 to your testimony today?

6 A. Yes, sir.

7 Q. Are those business cards that you removed from the person  
8 of Moshe Reichberg on the day of the Jeremy Reichberg arrest?

9 A. Yes, sir, they are.

10 MR. BELL: Your Honor, the government offers 1615A.

11 THE COURT: Counsel?

12 MS. NECHELES: I just haven't seen this, so I could  
13 see it? We did not get a copy of this.

14 THE COURT: Thank you. You can come up and look at  
15 it.

16 MS. NECHELES: We're fine.

17 THE COURT: Counsel for Mr. Grant, any objection?

18 MR. MERINGOLO: No objection.

19 THE COURT: I am accepting Government Exhibit 1615A  
20 into evidence, you can proceed.

21 (Government's Exhibit 1615A received in evidence)

22 MR. BELL: Your Honor, Mr. Hamilton, our paralegal  
23 specialist, could you put on the witness's screen 1615.

24 1615 is pictures of the various discrete business  
25 cards which I think will come in without objection.

IB6TGRA4

Chapel - Direct

1 MS. NECHELES: That's correct, your Honor, no  
2 objection.

3 THE COURT: Thank you. Counsel for Mr. Grant?

4 MR. MERINGOLO: No objection.

5 THE COURT: Thank you I'm accepting into evidence  
6 Government Exhibits 1615.

7 (Government's Exhibit 1615 received in evidence)

8 BY MR. BELL:

9 Q. As a general matter, Special Agent Chapel, how would you  
10 describe this composition of this stack of business cards based  
11 on your prior review? In other words, what kind of business  
12 cards are these generally?

13 A. These appear to be higher ups, command staff business  
14 cards, multiple different names, different agencies, but higher  
15 up; not a parole officer, much more supervisory business cards.

16 Q. When you say from different agencies, what kind of agencies  
17 are you talking about?

18 A. New York City Police Department Westchester, some Floral  
19 Park, multiple agencies and different types of business cards.

20 Q. Now amongst the business cards that you have in front of  
21 you, are there two that, rather than being made of paper,  
22 appear to be made of metal?

23 A. There are.

24 MR. BELL: And so your Honor, with the Court's  
25 permission, I would like to publish these by passing around to

IB6TGRA4

Chapel - Direct

1 the jury only two of the stack.

2 THE COURT: Thank you. You may proceed.

3 MR. BELL: May I approach?

4 THE COURT: You may.

5 MR. BELL: I would ask that you pass these around  
6 together so everyone could see them. Thank you.

7 And we can display those two on the screen as pages 2  
8 and 4 of Exhibit 1615. Is there a way that we can split screen  
9 those or do them individually?

10 Just to note what's on the screen, page 4 of  
11 Exhibit 1615 is on the right, it states: Family member, Police  
12 Department, City of New York, Jeremy Reichberg. The bearer of  
13 this card is an immediate family member of a police officer of  
14 the New York City Police Department. Chief Philip Banks, III.

15 The one on the right, page 2 of that exhibit, says the  
16 same thing but with respect to Rachel Reichberg.

17 Now Mr. Hamilton, could we direct everyone's attention  
18 to page 1 of 1615.

19 BY MR. BELL:

20 Q. Special Agent Chapel, can you just read off the name and  
21 title of the individual listed on this business card?

22 A. Michael J. Harrington, Deputy Chief.

23 Q. And is there a second line to the title?

24 A. Executive Officer, Chief of Department.

25 Q. Thank you.

IB6TGRA4

Chapel - Direct

1 MR. BELL: Mr. Hamilton, could you now take us to page  
2 3.

3 Q. And can you read once again the name and title and the  
4 extended title of the person on this card?

5 A. Philip Banks, III, Chief, Chief of Department, New York  
6 City Police Department.

7 Q. And could we go to page 6.

8 What is the name and title of the person listed on  
9 this card?

10 A. James Grant, Deputy Inspector Commanding Officer.

11 Q. And in the bottom left corner there's information  
12 concerning that post. What does it say as far as the precinct  
13 goes?

14 A. 19th Precinct.

15 Q. Special Agent Chapel, after you retrieved these items from  
16 Jeremy Reichberg's brother Moshe, did you continue on with the  
17 operation?

18 A. I did.

19 Q. What other things did you do that day?

20 A. I continued to assist in the search of rooms of the  
21 residence.

22 Q. Did you recover other items from the house?

23 A. I did.

24 Q. And did those other items include other business cards?

25 A. They did.

IB6TGRA4

Chapel - Direct

1 Q. So I would like to do --

2 MR. BELL: First, may I approach, your Honor?

3 THE COURT: You may.

4 Q. I would like to show you Government Exhibit 1616A which  
5 corresponds with 1616, I believe.

6 MR. BELL: I will note, your Honor, Special Agent  
7 Chapel is putting the previous evidence back in the bag,  
8 including the two gold cards which have been retrieved from the  
9 jury.

10 THE COURT: Thank you. So noted.

11 Q. I will now ask you to take a look at 1616A.

12 What do we have in 1616A, Special Agent Chapel?

13 A. More business cards, documents associated with  
14 Mr. Reichberg.

15 Q. Are these also items that you recovered from  
16 Mr. Reichberg's house?

17 A. Yes, they are.

18 MR. BELL: I now would like to approach you with what  
19 is marked for identification as Government Exhibit 1618A.

20 I will also ask, your Honor, the government would  
21 offer 1618 without the A, which, like the previous exhibit, is  
22 just the actual photographic rendering of the physical  
23 evidence.

24 MS. NECHELES: I think there's some confusion about  
25 the exhibits, perhaps if you could show --

IB6TGRA4

Chapel - Direct

1 MR. MERINGOLO: Is that the exhibit with the business  
2 cards?

3 MR. BELL: Your Honor, the government also offers  
4 1616A, which is photos of 1616, I assume without objection.

5 THE COURT: Thank you. The government is offering  
6 1616 and 1618. Any objection by the defense?

7 MR. MERINGOLO: No objection.

8 MR. BELL: And the physical exhibits themselves.

9 MS. NECHELES: I ask that we string this out, because  
10 what we have marked is not being introduced in evidence. So I  
11 don't have an objection, but I don't know what is being  
12 introduced.

13 THE COURT: Thank you. Please show Ms. Necheles.

14 MS. NECHELES: He did, but if we could get a copy of  
15 the actual items. I'm concerned about the logistics of what is  
16 going on. I don't have actual --

17 THE COURT: Thank you. I will accept at this time  
18 Exhibit 1616A and 1618A as well 1616 and 1618, I understand  
19 without objection.

20 Counsel for United States, please provide the defense  
21 with hard copies of each of those exhibits as you proceed.

22 MR. BELL: Yes, your Honor.

23 THE COURT: Thank you.

24 (Government's Exhibits 1616, 1616A, 1618 and 1618A  
25 received in evidence)

IB6TGRA4

Chapel - Cross

1 BY MR. BELL:

2 Q. Now finally, Special Agent Chapel, other than your  
3 involvement in Reichberg's arrest and the search of the house,  
4 were you otherwise involved in the investigation of Jeremy  
5 Reichberg?

6 A. I was not.

7 MR. BELL: Thank you, Special Agent Chapel, I have no  
8 further questions for you.

9 THE COURT: Thank you very much.

10 Counsel for Mr. Reichberg.

11 MS. NECHELES: Thank you, your Honor. Perhaps if I  
12 could get those exhibits.

13 MR. BELL: Do you want them all, Ms. Necheles?

14 MS. NECHELES: Yes, please.

15 THE COURT: Thank you, counsel, you can proceed.

16 CROSS-EXAMINATION

17 BY MS. NECHELES:

18 Q. So sir, on June 20, 2016, you were involved in the arrest  
19 of Mr. Reichberg and the search of his home, is that correct?  
20 That was your testimony?

21 A. Yes, ma'am.

22 Q. And before you went to the house you learned something  
23 about this case, right?

24 A. Yes, ma'am.

25 Q. It was already -- it was a very high profile case at the

IB6TGRA4

Chapel - Cross

1 time?

2 A. Yes, ma'am.

3 Q. It had been in the newspapers a lot.

4 A. Yes, ma'am.

5 Q. There had been a lot of leaks about the investigation.

6 MR. BELL: Objection.

7 THE COURT: Thank you.

8 MS. NECHELES: Withdrawn. I will rephrase that  
9 question.

10 THE COURT: Please do.

11 Q. There had been front page articles continuously reporting  
12 that the FBI and the United States Attorney's Office was  
13 investigating this case, is that correct?

14 MR. BELL: Objection.

15 THE COURT: Thank you. You can answer the question.

16 A. Yes, ma'am.

17 Q. And pictures of Jeremy Reichberg and Jona Rechnitz in the  
18 front page of many newspapers repeatedly?

19 A. I'm guessing, ma'am, I'm not familiar.

20 Q. I don't want you to guess. So beforehand, before you went  
21 to the office or to the home of Mr. Reichberg, you were aware  
22 that the government had used various techniques investigative  
23 techniques, is that correct?

24 MR. BELL: Objection.

25 THE COURT: Thank you. You can answer the question.

IB6TGRA4

Chapel - Cross

1 A. No, ma'am.

2 Q. You didn't know what they had done?

3 A. No.

4 Q. And when you got to the house it was 6 o'clock, and you  
5 testified that Mr. Reichberg opened the door and he came  
6 outside, right?

7 A. Yes, ma'am.

8 Q. And am I correct that he didn't look surprised, right?

9 A. No, ma'am.

10 Q. And he told you that there had been a car parked in front  
11 of the house all night that he thought was the FBI, right?

12 MR. BELL: Objection.

13 THE COURT: Thank you. You can answer the question.

14 A. I didn't have that conversation.

15 Q. Did he tell you that he expected to be arrested that  
16 morning?

17 MR. BELL: Objection, hearsay.

18 THE COURT: Thank you, you can answer the question.

19 A. I do not know, ma'am, I did not have a conversation with  
20 him.

21 Q. You were there arresting -- I thought you were right there  
22 with him.

23 A. I did not put the handcuffs on him, ma'am.

24 Q. But I thought you were standing right with him and saw him  
25 come out the door and saw him be surprised.

IB6TGRA4

Chapel - Cross

1 MR. BELL: Objection.

2 THE COURT: You can answer the question.

3 A. Yes, ma'am, I was.

4 Q. But you didn't hear what he said?

5 A. No, ma'am.

6 Q. Did you hear him say that he was asking the FBI -- that he  
7 knew he would be arrested but was asking that you not go in the  
8 house because he had three young children there?

9 MR. BELL: Objection.

10 THE COURT: You can answer the question.

11 A. Yes, ma'am, I did hear something about children inside the  
12 residence.

13 Q. And he came out of the house so that his children would not  
14 be terrified by all of these FBI agents coming inside to arrest  
15 him?

16 MR. BELL: Objection, hearsay.

17 THE COURT: Thank you. You can answer the question.

18 A. I don't recall that, I just remember somebody stating  
19 "children," yes, ma'am.

20 Q. And in fact, when you did the search of the house, I  
21 think -- what did you call it when you went around to secure  
22 the perimeter or something like that, you said?

23 THE COURT: Counsel, could you come up?

24 MR. BELL: Thank you, your Honor.

25 (Continued on next page)

IB6TGRA4

Chapel - Cross

1 (At sidebar)

2 THE COURT: Counsel, there's an objection regarding  
3 hearsay on these issues, and I think the basis for the  
4 objection is that these are statements by the defendant that  
5 you are eliciting for purposes of your case. What's your  
6 comment?

7 MS. NECHELES: The government wants to -- is going to  
8 argue, wants to argue that he had some sort of inside  
9 information. That is the only reason they elicited it. This  
10 is to show what actually occurred and what he said at the time;  
11 not for the truth of it, but this is his explanation at this  
12 time.

13 MR. BELL: This is plainly inadmissible, regardless of  
14 what the purpose is. They can get that in in some other way,  
15 but this is plainly inadmissible, and I move to strike that  
16 entire line of answers. It doesn't come in under the rules.

17 THE COURT: Thank you.

18 MS. NECHELES: He states that he was surprised --

19 THE COURT: Thank you.

20 MS. NECHELES: -- and I'm trying to explain why.

21 THE COURT: I understand. There's been an argument  
22 about why this witness's testimony regarding Mr. Reichberg's  
23 statements are not hearsay. There's not a strong argument or a  
24 good argument on that point. I may grant the United States  
25 request to strike that testimony.

IB6TGRA4

Chapel - Cross

1 MS. NECHELES: Your Honor, the testimony that he was  
2 saying -- all we were eliciting is when they were describing  
3 how he looked, and it was part of the whole thing, he said he  
4 looked surprised. They also have to hear what he said. You  
5 can't have half the story. He looked surprised or he didn't  
6 look surprised. They should not have elicited half of it.

7 MR. BELL: There is the rule of completeness, if  
8 that's what the defense --

9 THE COURT: Thank you, I think I heard enough. I will  
10 sustain the government's objection. I think it was properly  
11 interposed. I should not have let the evidence in, and I am  
12 willing to instruct the jury to disregard the responses  
13 regarding statements made by Mr. Reichberg to this agent.

14 MS. NECHELES: I would ask that your Honor instruct  
15 the jury that it's not admitted for the truth of it, but as  
16 parts of his response at the time. Beside your Honor, there's  
17 not even any evidence in, so tell did you the truth, there's  
18 nothing to strike. He said he didn't hear anything.

19 THE COURT: Thank you. But for the comments about the  
20 children.

21 MS. NECHELES: I think he said he didn't hear that.

22 MR. BELL: He said he heard that.

23 MS. NECHELES: He said he heard something about it.

24 MR. BELL: To the extent that he testified about that,  
25 it is not properly admitted.

IB6TGRA4

Chapel - Cross

1 THE COURT: Thank you very much. I agree with the  
2 government on this. And we'll have the opportunity to discuss  
3 this further, but I believe that the government is right.

4 MR. BELL: Thank you, your Honor.

5 (Continued on next page)

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IB6KGRA5

Chapel - Cross

1 THE COURT: Ms. Necheles, I'm sorry for interrupting  
2 earlier.

3 Ladies and gentlemen of the jury, just one comment:  
4 I've told you that from time to time, I may instruct you to  
5 disregard pieces of evidence in the case. I'm going to do that  
6 for the first time here now.

7 Please disregard, and do not consider, any testimony  
8 by the special agent regarding statements that you may have  
9 heard in Mr. Reichberg's case during the interaction that was  
10 the subject of questioning earlier.

11 Please proceed.

12 MS. NECHELES: Thank you, your Honor.

13 BY MS. NECHELES:

14 Q. So, sir, when you entered the house, you testified that you  
15 did a preliminary search of the house to determine whether  
16 there were people in the house, right?

17 A. That's correct, ma'am.

18 Q. And there were, in fact, three young children in the house,  
19 right?

20 A. Yes, ma'am.

21 Q. And they were sleeping, right?

22 A. Yes, ma'am.

23 Q. Were they scared?

24 A. No, ma'am.

25 Q. No?

IB6KGRA5

Chapel - Cross

1 And, sir, you also found Moshe Reichberg sleeping,  
2 also, right?

3 A. Yes, ma'am.

4 Q. And you woke him up?

5 A. Right.

6 Q. So, Mr. Reichberg, Mr. Jeremy Reichberg, had not had an  
7 opportunity to speak to Mr. Moshe Reichberg that morning before  
8 Mr. Moshe Reichberg woke up, right?

9 A. Not that I'm aware.

10 MR. BELL: Objection.

11 THE COURT: Thank you.

12 I accept the answer.

13 BY MS. NECHELES:

14 Q. When he came downstairs, Mr. Moshe Reichberg attempted to  
15 leave the house with items in his pocket, right?

16 A. That's correct, ma'am.

17 Q. When you were sort of looking around the house, did you  
18 notice there were a lot of photographs around?

19 A. Not in the areas I was, ma'am.

20 Q. Okay. When he came down, and he had some things in his  
21 house, you found a large amount of business cards, that's what  
22 you testified; am I correct?

23 A. Yes, ma'am.

24 Q. And you were aware that -- and you yourself seized other  
25 business cards from other areas of the house, right?

IB6KGRA5

Chapel - Cross

1 A. Yes, ma'am.

2 Q. And there was a lot of stuff seized that day, right?

3 A. Yes, ma'am.

4 Q. In the a lot of stuff, there were a lot of other business  
5 cards of police officers seized, right?

6 A. Yes, ma'am.

7 Q. Including high-ranking police officers, right?

8 A. Yes, ma'am.

9 Q. And some of those police officer items were seized by you,  
10 right?

11 A. Yes, ma'am.

12 Q. And those included business cards that were no different  
13 from the type of business cards that you found on Mr. Moshe  
14 Reichberg, right? Police cards from high-ranking police  
15 officers, right?

16 A. Yes, ma'am.

17 MR. BELL: Objection.

18 THE COURT: Thank you.

19 You can answer the question. I accept the answer.

20 BY MS. NECHELES:

21 Q. In addition, you seized a lot of PBA cards, too; am I  
22 correct?

23 A. Yes, ma'am.

24 Q. Just referring to item 1615-A, this was items that you  
25 seized from Mr. Moshe Reichberg, right? And those are the

IB6KGRA5

Chapel - Cross

1 business cards and very few PBA cards, right?

2 A. Yes, ma'am.

3 Q. The other items -- do you recall which is the one that you  
4 seized from the closet? Do you recall the number?

5 A. Yes, ma'am.

6 Q. You seized a bunch of business cards from the closet,  
7 right?

8 A. Yes, ma'am.

9 Q. And then in addition, you seized some -- from Mr. Moshe  
10 Reichberg, he had seven electronic devices on him, right?

11 A. Yes, ma'am.

12 Q. And he told you that some of those devices belonged to  
13 himself and his wife, right?

14 MR. BELL: Objection.

15 MS. NECHELES: Withdrawn.

16 THE COURT: Thank you.

17 BY MS. NECHELES:

18 Q. Did you come to learn that some of the devices belonged to  
19 Mr. Moshe Reichberg, to Mr. Reichberg's wife, Rachel Reichberg,  
20 and his daughter, Hannah Reichberg?

21 MR. BELL: Objection; foundation.

22 THE COURT: Thank you. Sustained.

23 Q. Were you involved in this case after the search?

24 A. No, ma'am.

25 Q. Have you ever reviewed any of the evidence?

IB6KGRA5

Chapel - Cross

1 A. No, ma'am.

2 Q. Well, that day, when there was the search -- so you don't  
3 know whose devices were on him, you have no idea, right?

4 A. No, ma'am, I do not.

5 Q. Do you know if any of those devices were very old devices?

6 MR. BELL: Objection; foundation.

7 THE COURT: Thank you.

8 You can answer the question if you know.

9 THE WITNESS: As far as old as in flip phones? Or --  
10 they all appeared to be working phones.

11 BY MS. NECHELES:

12 Q. Well, do you know -- how many devices were seized from the  
13 house that day, do you know?

14 MR. BELL: Objection; foundation.

15 THE COURT: Thank you.

16 You can answer the question.

17 THE WITNESS: I do not, ma'am.

18 Q. Didn't you participate in taking part in sort of writing up  
19 an inventory of what was seized?

20 A. No, ma'am.

21 Q. Did you see other people packing things up?

22 A. Yes, ma'am.

23 Q. And did you see other people packing up computers, and  
24 other phones, and iPads, and laptops that were around the  
25 house? Right?

IB6KGRA5

Chapel - Cross

1 A. There was a lot of items, but I can't testify to what other  
2 people packed, ma'am.

3 Q. A lot of items that Mr. Moshe Reichberg was not trying to  
4 take out of the house, right?

5 A. No, ma'am.

6 Q. "No, ma'am," meaning, no, he was not trying to take them  
7 how of the house, right?

8 A. Correct.

9 Q. Did you ever -- one of these items that you have here,  
10 1618-A, has multiple -- in it multiple thumb drives and disks  
11 in it, computer disks with computer storage, correct?

12 A. Yes, ma'am.

13 Q. And that was not being taken out of the house, right? That  
14 was just sitting in the house in a closet, right?

15 A. I believe that was on his person, ma'am.

16 Q. 1618-A?

17 A. Without seeing it, I can't...

18 Q. Okay. This was on him, but there were other CDs and drives  
19 in the house, correct? And computers?

20 A. Not that I seized, ma'am.

21 Q. But other people seized?

22 A. If --

23 Q. You said before, there were a lot of devices around?

24 A. Yes, ma'am.

25 Q. Do you know whether everything that was on the devices that

IB6KGRA5

Chapel - Cross

1 you seized from Mr. Reichberg was also on other devices that  
2 were still in the house?

3 MR. BELL: Objection.

4 Q. Do you know?

5 THE COURT: Thank you.

6 You can answer the question.

7 THE WITNESS: I do not, ma'am.

8 BY MS. NECHELES:

9 Q. And in preparation for your testimony here today, did the  
10 government discuss that at all with you?

11 MR. BELL: Objection.

12 THE COURT: Thank you.

13 Sustained.

14 Q. Well, did you ask what was in the house that was not -- you  
15 know, different than what was on Mr. Moshe Reichberg?

16 MR. BELL: Objection; relevance, scope.

17 THE COURT: Thank you. Sustained.

18 Q. In the house, were you also aware that as things were being  
19 put together and being taken, there were a lot of photos  
20 around? Were you aware of that?

21 MR. BELL: Objection; asked and answered.

22 THE COURT: Thank you.

23 You can answer the question.

24 THE WITNESS: Family photographs, ma'am? Or what type  
25 of photographs?

IB6KGRA5

Chapel - Cross

1 BY MS. NECHELES:

2 Q. A lot of photographs of police officers, right?

3 A. Yes, ma'am.

4 Q. And they were all over the place, there were framed  
5 photographs and books of photographs of police officers, right?

6 A. I don't recall where they were.

7 Q. Well, you recall there being framed ones and also photo  
8 albums, right?

9 A. I recall photo albums, yes, ma'am.

10 Q. And Mr. Moshe Reichberg was not trying to take those out of  
11 the house, right?

12 A. No, ma'am.

13 Q. Do you know whether those were printouts of what was on the  
14 CD that he was taking out of the house?

15 A. I have no idea, ma'am.

16 Q. Among the things that you took out, the USB drives and the  
17 other things, did you ever listen to them --

18 A. No, ma'am.

19 Q. -- and look at them?

20 Do you know whether they had any relevance to the  
21 charges in this case?

22 MR. BELL: Objection.

23 THE COURT: Thank you.

24 Sustained.

25 Q. Among the things that were in the house, there were dozens

IB6KGRA5

1 of PBA cards that you also seized, right?

2 MR. BELL: Objection; asked and answered.

3 THE COURT: Thank you.

4 You can answer the question.

5 THE WITNESS: Yes, ma'am.

6 MS. NECHELES: I have no further questions.

7 THE COURT: Thank you very much.

8 Counsel for Mr. Grant?

9 MR. MERINGOLO: No questions.

10 THE COURT: Thank you very much.

11 Counsel for the United States, any further questions  
12 for this witness?

13 MR. BELL: One moment, please.

14 THE COURT: Thank you. Please take your time.

15 MR. BELL: Your Honor, thank you. No further  
16 questions for Special Agent Chapel.

17 THE COURT: Thank you very much.

18 Thank you very much, Special Agent, for your  
19 testimony. You can step down.

20 THE WITNESS: Thank you, sir.

21 THE COURT: Thank you.

22 Counsel for the United States, would you please call  
23 your next witness.

24 MS. LONERGAN: Your Honor, can we confer with defense  
25 counsel for one moment?

IB6KGRA5

Haley - Direct

1 THE COURT: Yes, you may.

2 (Counsel confer)

3 MS. LONERGAN: Your Honor, the government calls Police  
4 Officer Theresa Haley.

5 THE COURT: Thank you very much. Please bring her  
6 forward.

7 THERESA HALEY,

8 called as a witness by the Government,

9 having been duly sworn, testified as follows:

10 THE DEPUTY CLERK: Can you please state your full name  
11 for the record and spell your last name slowly?

12 THE WITNESS: Theresa Haley, H-a-l-e-y.

13 THE DEPUTY CLERK: Thank you.

14 THE COURT: Thank you.

15 Counsel, you can inquire.

16 MS. LONERGAN: Thank you very much, your Honor.

17 DIRECT EXAMINATION

18 BY MS. LONERGAN:

19 Q. Good afternoon.

20 A. Good afternoon.

21 Q. Can you state your title for the record?

22 A. Police officer.

23 Q. Officer Haley, where do you work?

24 A. Highway Patrol Unit 2.

25 Q. Is that part of the New York City Police Department?

IB6KGRA5

Haley - Direct

1 A. Yes.

2 Q. When did you join the NYPD?

3 A. July 1st, 2003.

4 Q. Did you have any training after joining the NYPD?

5 A. Yes.

6 Q. Where?

7 A. The police academy.

8 Q. How long were you at the police academy?

9 A. For about six months.

10 Q. Briefly, what types of subjects did you cover at the  
11 academy?

12 A. Law, police science, and I don't remember what else.

13 Q. Officer Haley, I think you said you were assigned to  
14 highway unit 2; is that correct?

15 A. Correct.

16 Q. Can you explain what you mean by highway unit 2?

17 A. Highway unit 2 covers a part of the highway in Brooklyn.

18 Q. In brief, what are some of your duties and responsibilities  
19 as a police officer who's a member of highway unit 2?

20 A. To respond to 911 calls of car accidents, enforce the  
21 Vehicle and Traffic Law, and keep the roadway clear.

22 Q. When did you join highway?

23 A. November of 2013.

24 Q. Officer Haley, are you familiar with a term "on the job"?

25 A. Yes.

IB6KGRA5

Haley - Direct

1 Q. What does that mean?

2 A. It's like a cop reference to one another to let us know  
3 that they are another cop.

4 Q. Can you use the term both when you are on duty and when  
5 you're off duty?

6 A. Yes.

7 Q. Officer Haley, did you review any documents in connection  
8 with your testimony here today?

9 A. No.

10 Q. You didn't look at -- you weren't asked to look at any  
11 documents?

12 A. Today? No.

13 Q. Oh, sorry. My question was confusing.

14 Before taking the stand here, in the past few weeks,  
15 did you review any documents in connection with your testimony?

16 A. Yes.

17 Q. What, in general, did you review?

18 A. The arrest report.

19 Q. So I'd like to direct your attention to January 18, 2015.

20 Were you working that day?

21 A. Yes.

22 Q. Where were you assigned in January of 2015?

23 A. Highway Patrol Unit 2.

24 Q. Did you arrest someone on January 18, 2015?

25 A. Yes.

IB6KGRA5

Haley - Direct

1 Q. Who did you arrest?

2 A. I believe it was Avi Zangi.

3 Q. Where did you arrest Zangi?

4 A. On the Belt Parkway.

5 Q. Why were you at that location?

6 A. That was my patrol area, was the Belt Parkway, and there  
7 was two vehicles on the side of the road.

8 Q. When you saw the two vehicles on the side of the road, what  
9 did you do?

10 A. I approached them to see why were they positioned on the  
11 side of the road.

12 Q. What, if anything, did you do with the identification for  
13 the drivers of the two vehicles?

14 A. I did a license check.

15 Q. What's a license check?

16 A. It's when you type in their name or their client ID  
17 driver's license number to see if they're valid to drive or  
18 suspended. You get like a history of their driver's license.

19 Q. Why did you do that?

20 A. Because they were involved in a motor vehicle accident.

21 Q. What did you learn from doing that license check?

22 A. That one of the operators of the motor vehicles was  
23 suspended.

24 Q. Which one? Which operator?

25 A. Avi Zangi.

IB6KGRA5

Haley - Direct

1 Q. What does it mean to be suspended?

2 A. You can't drive in the State of New York.

3 Q. Is that also termed a suspended license?

4 A. Yes.

5 Q. What did you do after learning that Zangi had a suspended  
6 license?

7 A. I placed him under arrest.

8 Q. Were you required to place him under arrest for driving  
9 with a suspended license?

10 A. Yes.

11 Q. Approximately what time did you place Zangi under arrest?

12 A. I don't remember.

13 Q. Is there something I could show you that might help you --  
14 in which you've written down the time of his arrest?

15 A. Yeah. The omniform or the arrest report.

16 MS. LONERGAN: One moment, your Honor?

17 THE COURT: Please take your time.

18 (Pause)

19 MS. LONERGAN: Your Honor, may I approach?

20 THE COURT: You may.

21 BY MS. LONERGAN:

22 Q. Officer Haley, I'm going to hand you a document that's been  
23 marked as 3550-04 for identification. I'm going to ask you to  
24 turn to page 2.

25 What's the document that starts -- do you recognize

IB6KGRA5

Haley - Direct

1 the document that's on page 2 of 3550-04?

2 A. Yes.

3 Q. What is it?

4 A. It's the New York City Police Department omniform system  
5 for arrests.

6 Q. Is that in connection with the arrest of Avi Zangi?

7 A. Yes.

8 Q. Who completed that arrest report?

9 A. I did.

10 Q. At the time that you completed the arrest report, did you  
11 have firsthand knowledge of the time of the arrest?

12 A. Some of it.

13 Q. Sorry, let me just be very clear. At the time you  
14 completed the arrest report, did you have firsthand knowledge  
15 of the time that you placed Mr. Zangi under arrest?

16 A. Yes.

17 Q. Did you take care to complete that accurately?

18 A. Yes.

19 Q. Why?

20 A. It's an official police document.

21 MS. LONERGAN: Your Honor, we ask that Officer Haley  
22 be permitted to read the time of the arrest from her arrest  
23 report as her past recollection recorded.

24 THE COURT: Thank you.

25 Counsel?

IB6KGRA5

Haley - Direct

1 MR. MERINGOLO: No objection.

2 MS. NECHELES: No objection, your Honor.

3 THE COURT: Thank you.

4 Please proceed.

5 BY MS. LONERGAN:

6 Q. Officer Haley, can you read from the arrest report the time  
7 that you placed Zangi under arrest?

8 A. 1936.

9 Q. For those of us who don't speak military time, can you  
10 translate that for us?

11 A. 7:36 p.m.

12 Q. Thank you.

13 What did you do next with Zangi?

14 A. I proceeded to process the arrest.

15 Q. So what does that mean, to process an arrest?

16 A. Fill out all the paperwork that belongs to that violation  
17 for which he was arrested and then fingerprinted.

18 Q. Finish your answer.

19 So you fingerprinted him?

20 A. Yeah, he was fingerprinted.

21 Q. Where were you when you were processing Zangi?

22 A. In the 63rd Precinct.

23 Q. Did anything happen while you were processing Zangi?

24 A. Yes.

25 Q. What happened?

IB6KGRA5

Haley - Direct

1 A. The 63rd Precinct desk officer sergeant -- sergeant came  
2 and approached me.

3 Q. What did the sergeant say to you when he approached you?

4 A. He asked me if Mr. Zangi was getting a desk appearance  
5 ticket.

6 Q. How did you respond to that question?

7 A. I told him no.

8 Q. So you just said "desk appearance ticket." Is that also  
9 referred to as a DAT?

10 A. Yes.

11 Q. What is a desk appearance ticket, or a DAT?

12 A. It is like a court appearance ticket. Instead of an  
13 individual going to see the judge that night or the next  
14 morning, they would get to see the judge maybe in a month from  
15 then, they would get to go home.

16 Q. Okay. After an arrest, if someone doesn't get a desk  
17 appearance ticket, what happens to that person?

18 A. They will go to central booking, and then get processed,  
19 and then stay with the other individuals who are arrested, and  
20 then go see the judge.

21 Q. If the person who's arrested does get a desk appearance  
22 ticket, then what happens to that person?

23 A. He would get to go home.

24 Q. From the precinct?

25 A. Yes.

IB6KGRA5

Haley - Direct

1 Q. What was the sergeant's reaction when you said that you  
2 weren't giving Zangi a DAT?

3 A. He was a bit shocked.

4 Q. What, if anything, did you offer to do for the sergeant?

5 A. Well, he received a phone call, so he approached me and  
6 asked me if Mr. Zangi was getting a desk appearance ticket. I  
7 said: "No."

8 He appeared shocked, and that's when I said -- he  
9 didn't really want to speak to the person on the phone to tell  
10 him the answer, so I said: "Do you want me to go and speak to  
11 him on the phone?"

12 Q. How did the sergeant respond to your offer?

13 A. He said: "Can you?"

14 Q. When the sergeant said that there was someone on the phone,  
15 did the sergeant say anything about who the person was who was  
16 on the phone?

17 A. I believe he said it was an inspector.

18 Q. When the sergeant stated there was an inspector on the  
19 phone, what did you understand that to mean?

20 A. A boss of the -- in the NYPD.

21 Q. Are you familiar with the ranks in the NYPD?

22 A. Yes.

23 Q. And how are you familiar with those ranks?

24 A. Well, you first learn that when you go to training in the  
25 academy.

IB6KGRA5

Haley - Direct

1 Q. Can you walk us through the ranks in the NYPD, starting  
2 with police officer?

3 A. You have police officer. You get an appointment to  
4 detective, if you go that route. You have to take a test to  
5 become a sergeant, a test to become a lieutenant, and a test to  
6 become a captain. And then from captain and above, it will  
7 become an appointed position where it will be deputy inspector,  
8 an inspector, and then one-star chief, two-star chief,  
9 three-star, and four-star.

10 Q. How does the rank of deputy inspector or inspector compare  
11 to the rank of police officer?

12 A. Police officer is the lowest, and deputy inspector is  
13 clearly a little bit more above than the police officer.

14 Q. How does the rank of deputy inspector or inspector compare  
15 to the rank of sergeant?

16 A. It's the same thing. Sergeant is one above from a police  
17 officer if you take the test. Being a deputy inspector and  
18 inspector, you get appointed. Those are not test-taking  
19 positions.

20 Q. Would you characterize those as high-ranking offices?

21 A. Yes.

22 Q. When you said that there was the term "inspector," can you  
23 use that term to refer to either an inspector or a deputy  
24 inspector?

25 A. Yes.

IB6KGRA5

Haley - Direct

1 Q. Just to be clear, can you tell us how many ranks a deputy  
2 inspector or an inspector is above a sergeant?

3 A. Well, you next have lieutenant, and then a captain, then  
4 you'd have deputy inspector, so that would be the third, and  
5 the fourth would be inspector.

6 Q. And then a sergeant is one above a police officer; is that  
7 right? That's what you testified?

8 A. Yes.

9 Q. So a deputy inspector would be four above a police officer;  
10 is that correct?

11 A. Four above a police officer, yes.

12 Q. How can you tell what rank another officer is?

13 A. For a sergeant, you can tell by his shirt, he has chevrons,  
14 which is markings that go on the sleeves and a gold shield. A  
15 lieutenant would wear a white shirt, he would have a bar on his  
16 collars. And for a captain, he'd have two bars. A deputy  
17 inspector would have like an oak leaf, which looks like a  
18 flower a little bit, and then an inspector would have an eagle.

19 Q. What about chiefs?

20 A. They would have stars.

21 Q. What, if anything, are you supposed to do if an officer  
22 ranked deputy inspector or above arrives in a location where  
23 you're working?

24 A. Well, you'd obviously have to address him, salute him.

25 Q. How do you do that? What's the process of saluting someone

IB6KGRA5

Haley - Direct

1 of deputy inspector or above?

2 A. You'd raise your right hand, and place it to your head, and  
3 salute him.

4 Q. Is everybody who's in that area supposed to do that?

5 A. Anyone that he would approach.

6 Q. If you're sitting, are you allowed to remain sitting, or do  
7 you have to stand?

8 A. No, you'd have to stand.

9 Q. What is the reason that you stand and salute a deputy  
10 inspector or a higher rank than that?

11 A. It's a sign of respect.

12 Q. Why do you have to show respect to officers of higher rank?

13 A. We're a paramilitary organization.

14 MR. MERINGOLO: Objection; irrelevant.

15 THE COURT: Thank you.

16 You can answer the question. I accept it. Thank you.

17 Q. What do you mean by "paramilitary organization"?

18 A. We have rules to go by, we have to look a certain way, we  
19 have to look professional.

20 Q. Officer Haley, I'd like to return to the phone call when  
21 you arrested Zangi. You previously testified that you offered  
22 to go to the phone because the sergeant appeared nervous.

23 Did the sergeant take you up on your offer?

24 A. Yes.

25 MS. NECHELES: Objection. She didn't say nervous; she

IB6KGRA5

Haley - Direct

1 said surprised.

2 THE COURT: Thank you, counsel.

3 Can you rephrase the question?

4 MS. LONERGAN: Sure.

5 BY MS. LONERGAN:

6 Q. Because the sergeant appeared surprised.

7 So did you go to the phone?

8 MR. MERINGOLO: Objection; leading.

9 THE COURT: Thank you.

10 Can I ask you to rephrase the question, please,  
11 counsel.

12 MS. LONERGAN: Yes.

13 BY MS. LONERGAN:

14 Q. After you offered to go to the phone for the sergeant --  
15 that was your testimony -- what did the sergeant say when you  
16 offered to answer the phone for him or speak on the phone for  
17 him?

18 A. "Can you?"

19 Q. What did you do then?

20 A. I walked over to the phone.

21 Q. Who was the call from?

22 A. It was from Inspector Grant.

23 Q. Before this call, did you know who Grant was?

24 A. Yes.

25 Q. How did you know?

IB6KGRA5

Haley - Direct

1 A. At the time I used to work at the 76th Precinct, and  
2 there's three precincts that are joined together, 72, 78, and  
3 76, and he was the commanding officer of the 72 Precinct.

4 Q. Officer Haley, I'd like you to look around the courtroom to  
5 see if you see --

6 MR. MERINGOLO: We'll stipulate this is Jimmy Grant.

7 THE COURT: I'm sorry. Please proceed, counsel.

8 MS. LONERGAN: So let the record reflect --

9 BY MS. LONERGAN:

10 Q. So defense counsel has just pointed to an individual named  
11 Jimmy Grant. Did you see that defense counsel did do that?

12 A. I'm sorry?

13 Q. Did you see defense counsel point to someone named -- yes,  
14 is that the person that you're speaking about when you're  
15 speaking about Inspector Grant?

16 A. Yes.

17 MS. LONERGAN: Let the record reflect that the witness  
18 has identified the Defendant Grant.

19 THE COURT: So noted.

20 BY MS. LONERGAN:

21 Q. During that phone call about Zangi, what, if anything, did  
22 Grant say to you?

23 A. He inquired if Mr. Zangi was getting a desk appearance  
24 ticket.

25 Q. How did you respond?

IB6KGRA5

Haley - Direct

1 A. "No."

2 Q. How did Grant respond when you said that you were not  
3 giving Zangi a desk appearance ticket?

4 A. Surprised.

5 Q. What, if anything, did he say to you?

6 A. I believe he -- my answer was "No," so it was like a  
7 question back, like "No?"

8 MR. MERINGOLO: Objection.

9 THE COURT: Thank you.

10 You can answer the question. Please proceed. You can  
11 go ahead.

12 THE WITNESS: Oh. He asked the question back, like  
13 surprised, like "No?"

14 BY MS. LONERGAN:

15 Q. How did you respond when Grant asked the question "No"?

16 A. I told him, "No."

17 Q. What was your impression after Grant asked you a second  
18 time if Zangi was getting a desk appearance ticket?

19 A. I'm sorry?

20 Q. Sorry. What was your impression of the fact that Grant  
21 asked you twice --

22 MR. MERINGOLO: Objection.

23 THE COURT: Thank you.

24 You can answer the question.

25 Q. -- if Zangi was getting a desk appearance ticket?

IB6KGRA5

Haley - Direct

1 A. I'm sorry, say that again?

2 Q. Sure.

3 What was your impression after Grant asked you twice  
4 if Zangi was getting a desk appearance ticket?

5 A. That he wanted him to get a desk appearance ticket.

6 Q. Did Inspector Grant order you to give Zangi a desk  
7 appearance ticket?

8 A. No.

9 Q. Did you agree to give Zangi a desk appearance ticket?

10 A. No.

11 Q. Why not?

12 A. He didn't qualify.

13 Q. Why didn't Zangi qualify?

14 A. Well, at the time, I don't know how I became aware of it,  
15 but the Brooklyn attorney's office was stating that if two  
16 individuals --

17 MS. NECHELES: Objection. Objection, your Honor.  
18 This is hearsay.

19 THE COURT: Thank you.

20 Counsel, can you please rephrase the question?

21 MS. LONERGAN: Your Honor, may we approach?

22 THE COURT: You may come on up.

23 (Continued on next page)

24

25

IB6KGRA5

Haley - Direct

1 (At the sidebar)

2 THE COURT: First, counsel, there is an objection?

3 MS. NECHELES: The objection is she's about to elicit  
4 hearsay.

5 THE COURT: Thank you, counsel.

6 MS. LONERGAN: Your Honor, we're not eliciting it for  
7 the truth. We're eliciting it to explain why she believed that  
8 Zangi didn't qualify for a desk appearance ticket. We actually  
9 don't care if that was the rule or not. It's just what she  
10 understood the rule to be.

11 THE COURT: Thank you.

12 Counsel, any argument?

13 MS. NECHELES: Your Honor, it is coming in for the  
14 truth of it. This woman is saying she was reprimanded, and she  
15 was told to do something improper because Jimmy Grant said. In  
16 fact, she did not do the right thing, she violated the rules,  
17 and they want to bolster that she did something proper by  
18 having the testimony about the Brooklyn DA's Office. That's  
19 improper. She can go to the rules about what -- they put the  
20 DAT rules in.

21 THE COURT: Thank you.

22 What's the proffer that you are making regarding what  
23 the testimony is going to be?

24 MS. LONERGAN: I'm sorry, your Honor, are you asking  
25 me?

IB6KGRA5

Haley - Direct

1 THE COURT: Yes.

2 MS. LONERGAN: She's going to say that she had been --  
3 she doesn't know the source of the information, but her  
4 understanding was that the Brooklyn District Attorney's Office  
5 said that you could not get a DAT if you had a suspended  
6 license and were in an accident, that she had been told that.

7 THE COURT: Thank you.

8 MS. NECHELES: Your Honor, that's hearsay.

9 MR. MERINGOLO: That's against the patrol guide.

10 MS. NECHELES: Wait, wait, wait. She's saying that  
11 somebody told her that at some point?

12 MS. LONERGAN: It's her state of mind. It explains  
13 her decision in this process, why she declined to give this  
14 person a DAT.

15 THE COURT: Thank you.

16 I understand that it's not being offered for the truth  
17 of the matter, rather to explain, as counsel said, her state of  
18 mind and why it is that she acted in the way that she did. So  
19 I'm going to overrule the objection.

20 Thank you.

21 (Continued on next page)

22  
23  
24  
25

IB6KGRA5

Haley - Direct

1 (In open court)

2 BY MS. LONERGAN:

3 Q. Officer Haley, I think the question that had been posed to  
4 you was: Why did you make the decision not to offer Zangi a  
5 DAT, or desk appearance ticket?

6 A. He didn't qualify.

7 Q. Why did you say he didn't qualify?

8 A. Because at the time I became aware of the Brooklyn District  
9 Attorney's Office stating that if two individuals were involved  
10 in a motor vehicle accident, and one --

11 MS. NECHELES: Objection. Can we have when she became  
12 aware, how she became aware?

13 THE COURT: Thank you.

14 Counsel, you'll have the opportunity to inquire  
15 further.

16 Please proceed. You can answer the question.

17 Q. Go ahead, Officer Haley. You said the Brooklyn District  
18 Attorney's Office had a policy that?

19 A. Yeah, I don't know -- I'm sorry, whose question am I --

20 THE COURT: Thank you.

21 Counsel for the United States.

22 BY MS. LONERGAN:

23 Q. Officer Haley, let me rephrase the question for you.

24 You were about to explain, I think, that you became  
25 aware of a policy from the Brooklyn District Attorney's Office

IB6KGRA5

Haley - Direct

1 that had influenced your decision. Can you explain what  
2 happened, and why you made the decision not to give Zangi a  
3 DAT?

4 A. Okay. So I became aware that -- from the Brooklyn DA's  
5 Office that if two individuals or multiple were involved in a  
6 motor vehicle accident, and one or if more were involved -- had  
7 a suspended license, they would not get a desk appearance  
8 ticket.

9 Q. So what happened after the phone call from Grant?

10 A. I proceeded to process Mr. Zangi.

11 Q. Was Zangi released from the precinct that evening?

12 A. No.

13 Q. Where did you take Zangi?

14 A. To central booking.

15 Q. What is central booking?

16 A. That is the portion of the courthouse where individuals who  
17 get arrested go, and then they go get processed there, and then  
18 they go to see the judge.

19 Q. Approximately what time did you arrive at Brooklyn central  
20 booking with Zangi?

21 A. I don't remember.

22 Q. Is there something in which you've written down where --  
23 the time that you had arrived at Brooklyn central booking?

24 A. Yes.

25 Q. What would that be?

IB6KGRA5

Haley - Direct

1 A. My memo book.

2 MS. LONERGAN: Your Honor, may I approach?

3 THE COURT: You may.

4 BY MS. LONERGAN:

5 Q. Officer Haley, I'm going to hand you what's been marked as  
6 3550-03 for identification.

7 Do you recognize that?

8 A. Yes.

9 Q. What is 3550-03?

10 A. It's my memo book.

11 Q. What is a memo book?

12 A. It's something that every police officer must document, and  
13 it's like a diary of what we do within the course of our day.

14 Q. In your memo book, did you write down what time you arrived  
15 at Brooklyn central booking with Zangi?

16 Don't read it, just -- yeah.

17 A. Yes.

18 Q. At the time that you wrote that down, did you have  
19 firsthand knowledge of the time that you arrived at Brooklyn  
20 central booking with Zangi?

21 A. Yes.

22 Q. Did you take care to write that information down  
23 accurately?

24 A. Yes.

25 Q. Why?

IB6KGRA5

Haley - Direct

1 A. Because this is an official police document.

2 MS. LONERGAN: Your Honor, we ask that Officer Haley  
3 be permitted to read from her memo book as her past  
4 recollection recorded.

5 THE COURT: Thank you.

6 Counsel?

7 MR. MERINGOLO: No objection.

8 THE COURT: Counsel?

9 MS. NECHELES: No objection.

10 THE COURT: Thank you.

11 Please proceed.

12 BY MS. LONERGAN:

13 Q. Officer Haley, can you turn to page 4 and see if you can  
14 find the time when you arrived at Brooklyn central booking with  
15 Zangi?

16 A. 2226.

17 Q. Again, can you translate that for us?

18 A. 10:26 p.m.

19 Q. Did anyone else from the NYPD speak to you about Zangi's  
20 arrest?

21 A. Yes.

22 Q. Who?

23 A. My CO.

24 Q. What's a CO?

25 A. It's a commanding officer.

IB6KGRA5

Haley - Direct

1 Q. What, if anything, did your CO ask you about Zangi?

2 A. Why didn't he get a desk appearance ticket.

3 Q. How did you respond?

4 A. I proceeded to explain to him about what I became aware of  
5 with the Brooklyn District Attorney's Office.

6 Q. Did your answer appear to satisfy your CO?

7 A. No.

8 Q. What happened next in the conversation?

9 A. Then I proceeded to explain to him that, again, in my old  
10 precinct where I was stationed at in the 76 Precinct, behind  
11 the desk, there was like a little -- like a sheet stating a  
12 how-to process arrests of 511 arrests.

13 Q. What do you mean? What's a 511 arrest?

14 A. It's the legal traffic code for an individual who's  
15 suspended -- who has a suspended license.

16 Q. After that conversation with your CO, what, if anything,  
17 did your CO direct you to do?

18 A. Told me to go get a copy of it.

19 Q. "It" meaning what?

20 A. That sheet that was at my old precinct.

21 Q. Did you do that?

22 A. Yes.

23 Q. Officer Haley, separate from the case involving Zangi, are  
24 you familiar with the process of deciding whether to issue a  
25 desk appearance ticket?

IB6KGRA5

Haley - Direct

1 A. Yes.

2 Q. Who is responsible for the decision about whether to issue  
3 a DAT to someone who has been arrested?

4 A. The arresting officer.

5 Q. Are there any reasons why you may not issue someone a DAT?

6 A. Yes.

7 Q. Are those reasons written down anywhere?

8 A. Yes.

9 Q. Where?

10 A. The NYPD has a patrol guide.

11 Q. What's the patrol guide?

12 A. It's a guide on how to address and to do certain things  
13 within the police department for every interaction or incident  
14 that you have.

15 MS. LONERGAN: Your Honor, this may be a good time to  
16 do what we previously discussed regarding the patrol guide?

17 THE COURT: Thank you. Thank you very much, counsel.

18 So, ladies and gentlemen, you're about to hear some  
19 testimony regarding provisions of the NYPD patrol guide that  
20 apply to members of the New York Police Department. Now,  
21 neither defendant is on trial for any violation of the NYPD  
22 patrol guide. It's not a law. It is an internal guidance  
23 document used by the NYPD.

24 You may not find either defendant guilty on any count  
25 in this case merely because you believe that the defendant you

IB6KGRA5

Haley - Direct

1 are considering may have acted in a way that was not consistent  
2 with the NYPD patrol guide. However, you may consider any  
3 evidence regarding training Mr. Grant received with respect to  
4 the NYPD patrol guide to the extent that you find it sheds  
5 light on Mr. Grant's intent.

6 Thank you, counsel. You can proceed.

7 MS. LONERGAN: Thank you.

8 Mr. Hamilton, can we put up on the screen for the  
9 Court, counsel, and the witness Government Exhibit 710.

10 BY MS. LONERGAN:

11 Q. Officer Haley, do you recognize Government Exhibit 710?

12 A. Yes.

13 Q. What is it?

14 A. It's the patrol guide procedure on how to do a desk  
15 appearance ticket.

16 Q. Is that Procedure Number 208-27?

17 A. Yes.

18 MS. LONERGAN: Your Honor, at this time, I also would  
19 like to read a stipulation. One moment?

20 (Pause)

21 MS. LONERGAN: Your Honor, I'd like to read a  
22 stipulation. It's marked as Government Exhibit 1704. The  
23 stipulation says:

24 "Stipulation regarding New York City Police Department  
25 and Columbia University:

IB6KGRA5

Haley - Direct

1            "It is hereby stipulated and agreed by and between the  
2       United States of America, by Geoffrey S. Berman, United States  
3       Attorney for the Southern District of New York, Martin S. Bell,  
4       Jessica Lonergan, and Kimberly J. Ravener, Assistant United  
5       States Attorneys, Jeremy Reichberg, a/k/a Jeremiah Reichberg,  
6       a/k/a Yermy Reichberg, the defendant, by his attorney, Susan R.  
7       Necheles, Esq., and James Grant, a/k/a Jimmy Grant, the  
8       defendant, by his attorneys, John Meringolo, Esq., and Anjelica  
9       Cappellino, Esq., that:

10           " (1) If called as a witness, a qualified and  
11       knowledgeable representative from the New York City Police  
12       Department (NYPD) would testify as follows:

13           "(a) Documents marked with a controlled number within  
14       the ranges of SDNY 743 through SDNY 744, SDNY 11991 through  
15       SDNY 12030, SDNY 12036 through SDNY 12049, SDNY 12075 through  
16       SDNY 12080, SDNY 16271 through SDNY 16481, SDNY 23096 through  
17       SDNY 23112, SDNY 23642 through SDNY 23904, SDNY 23998 through  
18       SDNY 23997, SDNY 24327 through SDNY 59148, SDNY 59292 through  
19       SDNY 59427, SDNY 59435 through SDNY 59445, SDNY 59447 through  
20       SDNY 59519, SDNY 59530 through SDNY 59720, SDNY 62711 through  
21       SDNY 62819, SDNY 63338 through SDNY 63339, SDNY 65885 through  
22       SDNY 66015, SDNY 77784 through SDNY 77789, SDNY 78924 through  
23       SDNY 78929, SDNY 78988 through SDNY 79007, SDNY 10851 through  
24       SDNY 10858, SDNY 110406 through SDNY 110417, and SDNY 110426  
25       consist of true and correct copies of records kept by the NYPD,

IB6KGRA5

Haley - Direct

1 the originals of which were made at or near the time of the  
2 act, event, or condition recorded by or from information  
3 transmitted by a person with knowledge that were kept in the  
4 course of a regularly conducted activity of the NYPD and having  
5 been the regular practice of the NYPD to make such records.

6 "(2) Documents marked with a control number within the  
7 ranges of CU001 through CU037, SDNY 23642 through SDNY 23765,  
8 and SDNY 59617 through SDNY 59720 consist of true and correct  
9 copies of records kept by Columbia University, the originals of  
10 which were made at or near the time of the act, event, or  
11 condition recorded by, or from information transmitted by, a  
12 person with knowledge that were kept in the course of a  
13 regularly conducted activity of Columbia University, and having  
14 been the regular practice of Columbia University to make such  
15 records.

16 "It is further stipulated and agreed that the  
17 documents marked with the control numbers set forth in  
18 paragraphs 1 and 2 above consist of records that constitute  
19 records of regularly conducted activity pursuant to Rule 803(6)  
20 of the Federal Rules of Evidence.

21 "It is further stipulated and agreed that the  
22 stipulation is admissible and may be received as a joint  
23 exhibit at trial."

24 It's then dated New York, New York. I'm going to date  
25 it today's date, which is November 6th, 2018. It's signed by

IB6KGRA5

Haley - Direct

1 me, on behalf of the United States Attorney's Office, it's  
2 signed by Ms. Necheles, on behalf of Mr. Reichberg, and it's  
3 signed by Angelica Cappellino, on behalf of Mr. Grant.

4 So, at this point, the government offers Government  
5 Exhibit 1704 in evidence.

6 THE COURT: Thank you.

7 Any objection, counsel?

8 MS. NECHELES: No, your Honor.

9 MR. MERINGOLO: No objection.

10 THE COURT: Thank you.

11 I'm accepting Exhibit 1704 into evidence.

12 (Government's Exhibit 1704 received in evidence)

13 THE COURT: Counsel, I'm sorry to pause you briefly.  
14 I'd like to take a short break just to let people stretch their  
15 legs. Would this be a reasonable time to do that?

16 MS. LONERGAN: This is fine, your Honor.

17 THE COURT: Thank you.

18 Ladies and gentlemen, I'd like to take about a  
19 15-minute break just to give everybody a chance to stretch your  
20 legs. As always, don't discuss the case amongst yourselves,  
21 don't communicate about it with anyone else, and don't do any  
22 research about the case or anything involved in it. I'll see  
23 you back here shortly.

24 (Continued on next page)

IB6KGRA5

1 (Jury not present)

2 THE COURT: Counsel, I'd like to start again with the  
3 jury in 15 minutes, so I'd ask the witness to be back in the  
4 witness box by then.

5 I do want to take the opportunity to let everybody  
6 stretch their legs.

7 Anything that we need to take up now before we take  
8 this short break?

9 MR. BELL: For planning purposes, your Honor, does  
10 your Honor intend to go the full way to 3:30 today?

11 THE COURT: I think we should try to do that, if we  
12 can, given that we lost a little bit of time over lunch.

13 MR. BELL: We would agree. Thank you, your Honor.

14 THE COURT: Good. Thank you.

15 Anything for Mr. Reichberg?

16 MS. NECHELES: No, your Honor.

17 THE COURT: Thank you.

18 Counsel?

19 MR. MERINGOLO: No, your Honor. Thank you.

20 THE COURT: Good. Thank you.

21 I'll see you all back here shortly. Thank you.

22 (Recess)

23 THE COURT: Thank you.

24 Counsel, please proceed. United States.

25 MS. LONERGAN: Yes, your Honor.

IB6KGRA5

1               Sorry, our apologies.

2               Right after this witness is when we're going to seek  
3 to play calls, so I just want to flag that for the Court  
4 whether we want to put the binders now or do it --

5               THE COURT: That would be fine. I don't have a  
6 concern about that.

7               MS. LONERGAN: Okay. You want us to put the binders  
8 under the chairs now?

9               THE COURT: Please do.

10              And I understand that there's no particular issue  
11 about the recordings that the government seeks to play during  
12 this next witness?

13              MS. NECHELES: Your Honor, frankly, the problem is  
14 that the government will be playing tapes that are not so clear  
15 what the people are talking about, and there will be no witness  
16 to question them about -- they have a witness on the stand who  
17 is testifying about the arrest. They will be playing tapes  
18 that refer to the arrest. Their witness just testified about  
19 central booking. And the tapes are referring to what's going  
20 on at central booking.

21              MS. LONERGAN: Your Honor --

22              THE COURT: I'm sorry, what's the request?

23              MS. NECHELES: I would ask they be played while the  
24 witness is on the stand.

25              MS. LONERGAN: Your Honor, this witness was not a

IB6KGRA5

1 participant in any of the telephone calls at issue. In fact, I  
2 think it would be improper to ask her to interpret phone calls  
3 to which she was not a party to. To the extent that the phone  
4 calls are unclear, that's what argument is for. I don't think  
5 there's anything improper with the procedure that the  
6 government has advanced.

7 THE COURT: Thank you.

8 Counsel for defendant, are you suggesting that they  
9 ask this officer about the construction of these recordings?

10 MS. NECHELES: No. I'm suggesting they can ask her  
11 about the process that is going on here, but I'll ask the  
12 witness about the process.

13 THE COURT: Thank you.

14 Are we otherwise ready to bring in the jury?

15 Counsel for Mr. Grant, anything you'd like to raise?

16 MR. MERINGOLO: No.

17 THE COURT: Thank you.

18 Mr. Daniels, please bring in the jury.

19 (Pause)

20 THE COURT: Mr. Daniels, will you please bring in the  
21 jury.

22 THE DEPUTY CLERK: Yes, Judge.

23 THE COURT: Counsel, can you please bring forward the  
24 witness.

25 (Continued on next page)

IB6KGRA5

1 (Jury present)

2 THE COURT: Thank you, ladies and gentlemen. You can  
3 be seated.

4 First of all, welcome back, ladies and gentlemen of  
5 the jury. Thank you very much for indulging us in that break.

6 You'll see binders have been placed at your seats.  
7 Please don't look at them yet. I'll let you know when and what  
8 you should look at in those binders.

9 Counsel for the United States, you can proceed.

10 MS. LONERGAN: Thank you very much, your Honor.

11 BY MS. LONERGAN:

12 Q. Officer Haley, I want to circle back to one thing we were  
13 discussing earlier.

14 You said that you offered to take the phone call for  
15 the sergeant. Why did you make that offer?

16 A. Well, my answer to him -- when he asked me if Mr. Zangi was  
17 getting a desk appearance ticket, and my answer was "No," he  
18 felt, like, intimidated or a little worried to tell whoever was  
19 on the phone that answer.

20 Q. Okay. Let's return to where we were before the break.

21 MS. LONERGAN: Mr. Hamilton, can you put up on the  
22 screen for the parties, the Court, and the witness Government  
23 Exhibit 710.

24 Q. Officer Haley, I believe you identified this as the patrol  
25 guide section relating to desk appearance tickets; is that

IB6KGRA5

1 correct?

2 A. Correct.

3 MS. LONERGAN: Your Honor, at this time, the  
4 government offers Government Exhibit 710 into evidence.

5 THE COURT: Thank you.

6 Counsel?

7 MS. NECHELES: Your Honor, my understanding is you  
8 already ruled on our objections.

9 THE COURT: Thank you.

10 I'm accepting this exhibit into evidence. You can  
11 proceed.

12 (Government's Exhibit 710 received in evidence)

13 MS. LONERGAN: Thank you.

14 Mr. Hamilton, can we publish this?

15 BY MS. LONERGAN:

16 Q. Officer Haley, you should have the first page of this up on  
17 your screen. Can you read the purpose and then -- can you read  
18 the purpose of this?

19 A. "To issue a desk appearance ticket in lieu of detention."

20 Q. And then under "Definitions," can you read the first part  
21 of the definition, where it says, "Desk Appearance Ticket  
22 (DAT)."

23 A. "An appearance ticket issued in lieu of detention, at the  
24 direction of a desk officer, for misdemeanors, violations, and  
25 certain Class E felonies for hospitalized prisoners."

IB6KGRA5

1 Q. Okay. You said you testified earlier that there are  
2 rules -- sorry, there are -- that the patrol guide contains  
3 policies about when to issue desk appearance tickets.

4 Would that be in this section of the patrol guide?

5 A. I'm not sure.

6 MS. LONERGAN: Mr. Hamilton, can we flip forward to  
7 page 6 of 11.

8 Q. Officer Haley, can you -- you see it says in the middle of  
9 the page "Desk Appearance Ticket Guidelines"?

10 A. Yes.

11 MS. LONERGAN: Mr. Hamilton, can we also split the  
12 screen and bring up page 7 as well.

13 Q. Officer Haley, you see there's a list there, it starts with  
14 item (a), and then it goes all the way through item (u).

15 What is that list?

16 A. Those are the reasons for not to give a desk appearance  
17 ticket.

18 Q. Okay. And you're reading -- can you read right under where  
19 it says "Desk Appearance Ticket Guidelines"?

20 A. "The desk appearance ticket will not be issued in the  
21 following circumstances."

22 Q. Can you read section -- let's read Section (m), please.  
23 Can you read what it says in Section (m)?

24 A. "Aggravated unlicensed operation of a motor vehicle, second  
25 degree, VTL 511" -- I'm not sure what you call those bars, but

IB6KGRA5

1 that would indicate to me Subdivision 2(a) misdemeanor and  
2 first degree VTL 511 subdivision 3(a) felony."

3 Q. I think you previously testified what a 511 is.

4 What's a 511?

5 A. That's the Vehicle and Traffic Law for suspended licenses.

6 Q. What does "aggravated unlicensed operation of a motor  
7 vehicle" mean?

8 A. That's what it's called in the Vehicle and Traffic Law.

9 MS. LONERGAN: Mr. Hamilton, we can take this down.

10 Q. Officer Haley, apart from Zangi, have you ever received  
11 other phone calls from a high-ranking officer asking you about  
12 whether you were giving someone a DAT?

13 A. Not that I can recall.

14 Q. Again, you've used the term 511, a 511 arrest. Was the  
15 arrest of Zangi a 511 arrest?

16 A. Yes.

17 Q. Separate from the case involving Zangi, are you familiar  
18 with 511 or suspended license arrests?

19 A. Yes.

20 Q. Is there any NYPD guidance about how to handle 511 arrests?

21 A. Yes.

22 Q. Where is that?

23 A. Again, in the patrol guide.

24 MS. LONERGAN: Mr. Hamilton, can we put on the screens  
25 for the Court, the witness, and the parties Government Exhibit

IB6KGRA5

1 711.

2 BY MS. LONERGAN:

3 Q. Officer Haley, do you recognize Government Exhibit 711?

4 A. Yes.

5 Q. What is it?

6 A. That's the patrol guide procedure of arrest processing,  
7 aggravated unlicensed operation of a motor vehicle.

8 Q. Is that section Procedure No. 208-53?

9 A. Yes.

10 MS. LONERGAN: Your Honor, the government offers  
11 Government Exhibit 711 in evidence.

12 THE COURT: Thank you.

13 Counsel?

14 MS. NECHELES: Same objection as before.

15 THE COURT: Thank you.

16 I'm accepting Government Exhibit 711 into evidence.

17 (Government's Exhibit 711 received in evidence)

18 THE COURT: Counsel, you can proceed.

19 MS. LONERGAN: Mr. Hamilton, can we publish page 1 for  
20 the jury.

21 BY MS. LONERGAN:

22 Q. Officer Haley, can you read the purpose?

23 A. "To process arrests for operating a motor vehicle with a  
24 suspended or revoked license."

25 Q. Can you read the procedure, what it says under "Procedure."

IB6KGRA5

1 A. "When a uniformed member of the service observes, or has  
2 reasonable cause to believe, that a person operating a motor  
3 vehicle has a suspended or revoked driver's license."

4 Q. And then it says, "Uniformed member of the service," and  
5 there's a number of steps.

6 What are those steps explaining?

7 A. What to do when you have an arrest of a -- an aggravated  
8 unlicensed operator of a motor vehicle.

9 Q. And then let's read steps 1 through 4, if you can.

10 A. Effect an arrest for a violation of any degree of  
11 aggravated unlicensed operation of a motor vehicle: (a) remove  
12 prisoner to police facility for processing; (2) conduct a  
13 license check (DALI) and name check via FINEST; (a) retain  
14 printout and include in DAT or online arrest folders; step (3)  
15 is comply with current department procedures regarding  
16 issuances of a desk appearance ticket (PD260-121); and steps 5,  
17 6, 7, and 8, and 9 below, if prisoner is charged with  
18 aggravated unlicensed operation of a motor vehicle (AUO) third  
19 degree and is otherwise eligible; step (4) is comply with all  
20 pertinent arrest processing procedures.

21 MS. LONERGAN: We can take that down. Thank you.

22 You.

23 Q. Officer Haley, based on your experience, would you describe  
24 a 511 arrest as a minor offense or a major offense?

25 A. Minor.

IB6KGRA5

Haley - Cross

1 MS. NECHELES: Objection.

2 THE COURT: Thank you.

3 I accept the answer.

4 BY MS. LONERGAN:

5 Q. Apart from Zangi, have you ever received other phone calls  
6 from a high-ranking officer asking about a suspended license  
7 arrest?

8 A. None that I can remember.

9 MS. LONERGAN: One moment, your Honor.

10 THE COURT: Thank you.

11 Please take your time.

12 (Pause)

13 MS. LONERGAN: Your Honor, no further questions.

14 THE COURT: Thank you very much.

15 Counsel for Mr. Reichberg?

16 MS. NECHELES: Thank you, your Honor.

17 CROSS-EXAMINATION

18 BY MS. NECHELES:

19 Q. Good afternoon.

20 A. Good afternoon.

21 Q. You testified in your direct examination that the police  
22 department is a paramilitary organization, correct?

23 A. Correct.

24 Q. By that, you were saying that you are required to show  
25 respect to people above you, correct?

IB6KGRA5

Haley - Cross

1 A. Correct.

2 Q. And, for example, you talked about that you have to stand  
3 up -- you're taught to stand up if a captain, I think you said,  
4 comes in a the room or anybody higher than that?

5 A. Deputy inspector.

6 Q. Deputy inspector?

7 And in addition to that, you testified that you --  
8 being a paramilitary organization, you needed to follow orders,  
9 right?

10 A. Correct.

11 Q. When you are told by a supervisor to do something, you have  
12 to do that then, right?

13 A. Correct.

14 Q. And in addition to there being orders, there are also rules  
15 that are set out for what a police officer should do, right?

16 A. Guides.

17 Q. Guides?

18 A. Correct.

19 Q. Which are rules, right?

20 A. They're guides.

21 Q. Well, you mean you don't have to follow them?

22 A. You have to follow them, yes.

23 Q. You don't have unchecked discretion on what you can do as a  
24 police officer, right?

25 A. I'm sorry?

IB6KGRA5

Haley - Cross

1 Q. Well, you would have a lot of power as a police officer,  
2 right?

3 A. In what way?

4 Q. Well, you can arrest people, right?

5 A. Yes.

6 Q. And you can stop people on the street, correct?

7 A. Correct.

8 Q. And there are guides, or rules, about how you are supposed  
9 to use that power, right?

10 A. Correct.

11 Q. And those guides and rules are, in part, contained in the  
12 patrol guide, right?

13 A. Right.

14 Q. And there are also supervisors who supervise what police  
15 officers do, to make sure that they do not act incorrectly and  
16 beyond -- or abuse their power, right?

17 A. Right.

18 Q. When you arrested Zangi, Mr. Zangi, you charged him with  
19 VTL 511(1)(a), correct?

20 A. I'm not sure.

21 MS. NECHELES: Your Honor, I would offer in evidence  
22 the arrest, the complaint. It's not for the truth of it, but  
23 to show what was charged with.

24 MS. LONERGAN: Your Honor, we have multiple objections  
25 to this. I don't know if you want to approach.

IB6KGRA5

Haley - Cross

1 THE COURT: Thank you.  
2 You can come on up. I'd be happy to hear from you.  
3 (Continued on next page)

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IB6KGRA5

Haley - Cross

1 (At the sidebar)

2 THE COURT: Thank you.

3 There's an objection. Please proceed.

4 MS. LONERGAN: Yes, your Honor.

5 The first is that this is the state court complaint,  
6 which may or may not contain the same charge as the arrest  
7 report. I'd have to check the arrest report to see if it's the  
8 same charge.

9 Also, to the extent that she is asking what the charge  
10 was at the time of arrest, I don't think she needs this entire  
11 document, which contains all sorts of other facts, like what  
12 the officers saw, and evidence. We would have no objection to  
13 her asking the witness to read a part of her arrest report into  
14 the record as her past recollection recorded. We've already, I  
15 think, established the basis for that hearsay exception.

16 THE COURT: Thank you.

17 Counsel, just a question, and I invite your comments,  
18 Ms. Necheles, but why isn't it possible to refresh the witness'  
19 recollection through normal witness recollection-refreshing or  
20 using past recollection recorded, which the government went to  
21 as a first step, in lieu of first asking whether or not there  
22 is evidence that could refresh the witness' recollection? Both  
23 of those means appear to be available to you in response to her  
24 failure of recollection here. Why are you turning to the  
25 complaint?

IB6KGRA5

Haley - Cross

1 MS. NECHELES: Your Honor, I would like there to be in  
2 the jury room a document which shows exactly what this person  
3 was arrested for. It's a little confusing. There are three  
4 sections of 511. Two of them are listed in the patrol guide as  
5 you should not give a DAT to. That's what the government is  
6 just points out. This section is not listed. Nothing in this  
7 report is harmful to the government. It's all just irrelevant  
8 to everything else. This section is extremely relevant because  
9 she was supposed to give a DAT. And the jury needs to be able  
10 to look at that and see it.

11 I just want to prove my case in a way that's the most  
12 effective. I'm not putting in here anything that would be  
13 about what happened at the scene of the arrest. I just want  
14 them to see what this person was arrested for, because she was  
15 supposed to give a DAT, and it's in that patrol guide that they  
16 just put in evidence.

17 THE COURT: Thank you.

18 Counsel for the United States?

19 MS. LONERGAN: Your Honor, if she wants to do that, I  
20 (a) prefer the arrest report, because that's actually what this  
21 officer drafted, and not this, which is what is the prosecutor  
22 drafted; and if she wants it in for the statutes, then she can  
23 put it in for that.

24 Can I check this for one second --

25 MS. NECHELES: Your Honor --

IB6KGRA5

Haley - Cross

1 MS. LONERGAN: -- and see if I have any --

2 MS. NECHELES: Wait. Can I finish?

3 I don't think I should be told how to do it. She  
4 just --

5 THE COURT: I'm sorry, one question is: What's the  
6 basis for bringing in the criminal complaint through this  
7 witness?

8 MS. NECHELES: I believe she ends up signing it. Yes,  
9 she signs it, Judge.

10 MS. LONERGAN: But not for the decisions of what  
11 crimes to charge. That's not her decision.

12 MS. NECHELES: She charges the same thing, puts the  
13 same thing in her arrest report. It's just a little less  
14 clearly set out because it doesn't have the parentheses and the  
15 subsection.

16 THE COURT: Thank you.

17 What is the basis, then, for excluding the complaint,  
18 United States?

19 MS. LONERGAN: Sorry, your Honor. One moment?

20 MS. NECHELES: This is a misdemeanor. This is the  
21 only misdemeanor.

22 (Pause)

23 MS. LONERGAN: Why don't you go through the steps to  
24 establish what this is, and that she adopts the statements in  
25 it, and she signed it, because, otherwise, this wasn't drafted

IB6KGRA5

Haley - Cross

1 by her.

2 MS. NECHELES: She signed it under oath and the  
3 penalty of perjury.

4 MS. LONERGAN: But you have --

5 MS. RAVENER: Ms. Necheles, that makes it a prior  
6 consistent statement with her testimony, and it doesn't meet  
7 the hearsay exception.

8 MS. NECHELES: I'm not putting it in for the hearsay.  
9 It's not going in for the truth of it. It's what this person  
10 was charged. I don't care what she says.

11 MS. RAVENER: You still need to meet the rules.

12 MS. NECHELES: You don't have to meet the hearsay  
13 rules if you're not putting it in the truth of it.

14 THE COURT: Thank you.

15 Counsel, I agree with the United States, that you have  
16 to lay a foundation for the introduction of this --

17 MS. NECHELES: Yes.

18 THE COURT: -- document.

19 What do you proffer is going to be the basis for the  
20 introduction of the record?

21 MS. NECHELES: I'm going to ask her if that's the  
22 complaint that she signed under oath, and was this what the  
23 person was charged.

24 THE COURT: Thank you.

25 MS. NECHELES: I assume she will say yes, because she

IB6KGRA5

Haley - Cross

1 did, and then I will offer it in evidence. If they want, I  
2 will also offer her arrest report, which also has the same  
3 charge in it.

4 THE COURT: Thank you.

5 Counsel? United States.

6 MS. LONERGAN: I think we should offer both documents.

7 THE COURT: Fine. Thank you. Let's proceed.

8 (Continued on next page)

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IB6KGRA5

Haley - Cross

1 (In open court)

2 THE COURT: Thank you.

3 Ms. Necheles, please proceed.

4 MS. NECHELES: Thank you, your Honor.

5 BY MS. NECHELES:

6 Q. So, to be clear, Officer, when you arrest somebody, you  
7 fill out an arrest report; is that correct?

8 A. Yes.

9 MS. NECHELES: Sorry.

10 (Pause)

11 BY MS. NECHELES:

12 Q. I'm showing you what has been marked, or what will be  
13 marked, as Defendants' Exhibit JR9509. That was the arrest  
14 report, am I correct, that you filled out? It should only be  
15 for you to look at, and the Court, and counsel.

16 Do you see that in front of you, the arrest report on  
17 Avi Zangi?

18 A. Yes.

19 MS. NECHELES: I offer that in evidence, your Honor.

20 Your Honor, I would offer that.

21 MS. LONERGAN: No objection.

22 THE COURT: Thank you.

23 I'm accepting Exhibit JR9509.

24 (Defendants' Exhibit JR9509 received in evidence)

25 THE COURT: You can proceed.

IB6KGRA5

Haley - Cross

1 MS. NECHELES: If we can publish that to the jury.

2 BY MS. NECHELES:

3 Q. That is the document that you filled out that had the  
4 arrest time, that you testified about before, at 6:36, correct?

5 A. No, incorrect.

6 Q. 1936?

7 A. Correct.

8 Q. Is that 6:36 in the afternoon?

9 A. No.

10 Q. What time is that?

11 A. 7:36.

12 Q. Okay. Thank you.

13 In there, when you look down and see where it says  
14 charges --

15 MS. NECHELES: If we could highlight that.

16 THE COURT: I'm sorry, can you make the image a little  
17 larger, please. It would help me read it.

18 MS. NECHELES: I think we could pop out that charges  
19 part, if you could.

20 Q. Do you see where it says that, the charges part?

21 A. Yes.

22 Q. Those are the charges that you thought that should be  
23 brought against Mr. Zangi, right?

24 A. Correct.

25 Q. The process that goes on is, first, that you, as a police

IB6KGRA5

Haley - Cross

1 officer, would write something up and then it would be sent  
2 over to the DA's office, and they would decide on the actual  
3 charges; is that correct?

4 A. Correct.

5 Q. And they might be the same or they might be different?

6 A. Correct.

7 Q. But the charges, the top charge that you thought should be  
8 there was VTL 511-01, right?

9 A. Right.

10 Q. And that's subsection (1), right, of the VTL?

11 A. Correct.

12 Q. And that's a misdemeanor, right?

13 A. Right.

14 MS. NECHELES: If you could take that down.

15 Q. I want to show you what has been marked as Defendants'  
16 Exhibit JR9501.

17 Do you recognize that document to be the criminal  
18 complaint in People v. Zangi?

19 A. Yes.

20 Q. If you go to the next page, you signed that document,  
21 right?

22 A. Yes.

23 Q. Under oath?

24 A. I'm sorry?

25 Q. Under oath?

IB6KGRA5

Haley - Cross

1 A. Yes.

2 MS. NECHELES: I offer that in evidence, your Honor.

3 THE COURT: Thank you.

4 Can I see the first two pages of the document, please.

5 MS. NECHELES: Your Honor, would you like me to hand  
6 it up?

7 THE COURT: Please do. Thank you.

8 The exhibit is two pages in length?

9 MS. NECHELES: Yes.

10 THE COURT: Thank you.

11 Counsel for the United States, any objection?

12 MS. LONERGAN: Your Honor, no; just clarifying, it's,  
13 pages 3 and 4 of what's been handed up that will be the exhibit  
14 and no objection to those two pages.

15 THE COURT: Thank you very much. These are the only  
16 two pages that have been handed to me. I am accepting  
17 Exhibit JR9501 into evidence.

18 (Defendants' Exhibit JR9501 received in evidence)

19 (Continued on next page)

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IB6TGRA6

Haley - Cross

1 THE COURT: Thank you, counsel.

2 MS. NECHELES: Thank you, your Honor.

3 If we publish that to the jury. If that could be --  
4 if you focus on the portion that has the charges.

5 BY MS. NECHELES:

6 Q. So the charges that were charged against the defendant were  
7 VTL 511.1(a), right?

8 A. Yes.

9 Q. And that was the same charge that was in your arrest  
10 complaint, right, the sub 1 section?

11 A. Correct.

12 Q. And that is the misdemeanor charge, right?

13 A. Correct.

14 Q. And when you looked at the patrol guide earlier that the  
15 government showed you, which was Government Exhibit 710, that  
16 had rules about when you give a desk appearance ticket, right?

17 A. I don't remember the number that you said, but the desk  
18 appearance ticket procedure, I remember that.

19 MS. NECHELES: If we put that up instead.

20 THE COURT: What are you asking to be put up, counsel?

21 MS. NECHELES: It's in evidence, Government  
22 Exhibit 710, the rules about the desk appearance ticket.

23 THE COURT: Thank you.

24 MS. NECHELES: If we publish that to the jury, your  
25 Honor.

IB6TGRA6

Haley - Cross

1 THE COURT: You may.

2 Q. So this is the rules about the patrol guide which contains  
3 the rules about when you're supposed to issue a desk appearance  
4 ticket, correct?

5 A. It's the guide to do the procedure, yes.

6 Q. And we said before, the guides contain rules, right?

7 A. It's a guide, that's what it's called. It's not a rule  
8 book, it's called a guide.

9 Q. So you think you can ignore the guide, that you don't have  
10 to follow it as a police officer, is that your testimony?

11 A. No, that's not what I am implying. You continue to ask if  
12 it's a rule. It's a guide.

13 Q. But guide means you're supposed to follow that, that's what  
14 the patrol guide means, is that this directs what you -- how  
15 you are supposed to behave as a police officer, right?

16 A. Correct.

17 Q. And the reason you're saying guide as opposed to rules is  
18 because some of the things in this patrol guide are not  
19 mandatory, right?

20 A. That's not correct.

21 Q. You think everything in it is mandatory?

22 A. Correct, it should be followed.

23 Q. So if you look at the definitions here --

24 MS. NECHELES: If you could just pop that part out.

25 Q. So you testified previously that a desk appearance ticket

IB6TGRA6

Haley - Cross

1 means someone just goes home, right? Is that what you said  
2 before?

3 A. Sorry, say again?

4 Q. You testified previously a desk appearance ticket means  
5 someone goes home. Those were your words before.

6 A. If one was to receive one.

7 Q. But actually what it means it they don't go to jail that  
8 night, but they go home and they come back to court to face  
9 criminal case, right?

10 A. Correct.

11 Q. There's no -- the case is not dismissed just because you  
12 get a desk appearance ticket, right?

13 A. Correct.

14 Q. It's just the person does not have to spend the night in  
15 jail, right?

16 A. Right.

17 Q. And it saves the government, New York City Department of  
18 Corrections, a lot of money to have people able to go home  
19 instead of come to court, right?

20 MS. LONERGAN: Objection.

21 THE COURT: Thank you. You can answer the question if  
22 you know the answer.

23 A. I wouldn't know that answer.

24 Q. Well, isn't that part of what you are taught about the  
25 reason that desk appearance tickets are given, that you are

IB6TGRA6

Haley - Cross

1 taught that when you become a police officer?

2 A. No, you asked the question about saving money and such, I'm  
3 not aware of that.

4 Q. Well, after you failed to comply with the rule, you were  
5 sent for retraining, right?

6 MS. LONERGAN: Objection.

7 THE COURT: You can answer the question.

8 Q. We'll get to that. Withdrawn.

9 So here it says a desk appearance ticket is an  
10 appearance ticket issued in lieu of detention at the direction  
11 of a desk officer for misdemeanors, violations, and certain  
12 class E felonies for hospitalized prisoners, right?

13 A. Correct.

14 Q. So when there is a misdemeanor or a violation, you're  
15 supposed to issue a desk appearance ticket, right?

16 A. Not in all cases.

17 Q. Because there's rules in here about when you don't issue  
18 it, but the starting off presumption is that the person should  
19 get a desk appearance ticket, right?

20 A. Correct.

21 Q. And then if we go on, just one more thing, that says at the  
22 direction of a desk officer, right?

23 A. Yes.

24 Q. And you were not a desk officer, were you?

25 A. No.

IB6TGRA6

Haley - Cross

1 Q. The sergeant was the desk officer, right?

2 A. Yes.

3 Q. So when you testified on your direct examination and you  
4 were asked who determines whether a DAT is given, and you said  
5 the arresting officer, that was incorrect, right?

6 A. When an individual is arrested, the arresting officer makes  
7 the decision to give a desk appearance ticket.

8 Q. That's not what this says, is it?

9 A. It's stating at the direction.

10 Q. All right. So why don't we -- you think it's really  
11 supposed to have been you get complete discretion to decide, is  
12 that your testimony?

13 A. Say again?

14 Q. It's your testimony, am I correct, that the arresting  
15 officer has complete discretion on whether or not to issue a  
16 desk appearance ticket, is that your testimony?

17 A. It's not discretion, there are things that have to happen  
18 and be checked in order to give an individual the desk  
19 appearance ticket.

20 Q. But it's your testimony that the arresting officer is the  
21 person who makes the decision to issue a DAT, is that correct?

22 A. Correct.

23 Q. And if you could turn to page 774 and the section under  
24 accountability.

25 So we are now on page 774, which is page 8 of 11 on

IB6TGRA6

Haley - Cross

1 the desk appearance ticket general procedures, and I want to  
2 direct your attention to this part that says accountability,  
3 and it says the decision to issue a DAT to an eligible prisoner  
4 rests solely with the desk officer. Right?

5 A. Yes.

6 Q. So your testimony just now that the decision to issue a DAT  
7 rested with the arresting officer was wrong, right?

8 A. No, correct.

9 Q. It's not what the patrol guide says, is it?

10 A. This states -- that's what that states, yes.

11 Q. So the patrol guide is wrong?

12 A. No.

13 Q. The patrol guide is right, isn't it?

14 A. According to this, this is what it states.

15 Q. According to this, meaning you don't know, or you question  
16 it?

17 A. No, I do not question it.

18 Q. So the decision to issue a DAT does not lie with the  
19 arresting officer. You were incorrect on your direct  
20 testimony, right?

21 A. It is the arresting officer's decision to give a desk  
22 appearance ticket to an individual based on the circumstances  
23 of the arrest.

24 Q. So you disagree with this, right?

25 Let me ask you something, before you came in to court

IB6TGRA6

Haley - Cross

1 today to testify about desk appearance tickets and how it  
2 should be given out, did it occur to you to review the general  
3 ticket general proceedings in the guidelines?

4 A. No.

5 Q. You didn't think that that would be something important to  
6 know what the rules are or the guidelines are about issuing a  
7 desk appearance ticket before you testified?

8 MS. LONERGAN: Objection.

9 THE COURT: You can answer the question.

10 A. I'm sorry, you have to ask it again.

11 Q. You didn't think it would be important for you to review  
12 what the rules and guidelines are in the patrol guide about  
13 issuing a desk appearance ticket before you testified about the  
14 rules on a desk appearance ticket in a criminal case? You  
15 didn't think it was important to review that first?

16 MS. LONERGAN: Objection, your Honor.

17 THE COURT: Thank you. You can answer the question.

18 A. I wasn't sure if I could, but I didn't think to, no.

19 Q. All right. And you said that the sergeant was the desk  
20 officer, right?

21 A. Correct.

22 Q. And the sergeant told you to issue a DAT. That was your  
23 testimony on direct, correct?

24 A. It's not what I said.

25 Q. What did you say?

IB6TGRA6

Haley - Cross

1 A. He asked me a question.

2 Q. He asked you if you were issuing a DAT, right?

3 A. Correct.

4 Q. And he said you should issue a DAT, and when you said no,  
5 he was surprised. That was your testimony, right?

6 A. That's not what I said.

7 MS. LONERGAN: Objection.

8 THE COURT: Counsel, could you rephrase?

9 Q. Tell me: Why was he surprised?

10 A. Well, from what appeared to me is whoever was on the phone,  
11 he didn't want to go back to tell that individual on the phone  
12 the answer that I gave him.

13 Q. Let's back up. The sergeant came to you and he asked you  
14 something and you said, when you said no, he was surprised,  
15 right?

16 MS. LONERGAN: Objection, your Honor.

17 THE COURT: Counsel, could I ask you to rephrase.

18 Q. Okay. Do you recall testifying that you said no to the  
19 sergeant?

20 A. Yes.

21 Q. And what did you say no in response to?

22 A. When he asked me if Mr. Zangi was receiving a desk  
23 appearance ticket.

24 Q. You said no, you weren't going to give him one, right?

25 A. Stated no.

IB6TGRA6

Haley - Cross

1 Q. And he said that he had someone on the phone who believed  
2 you should be giving a desk appearance ticket, right?

3 MS. LONERGAN: Objection.

4 THE COURT: Thank you. You can answer the question.

5 A. That's not what he said.

6 Q. What did he say?

7 A. Again, his demeanor when I stated to him no, he said  
8 someone is on the phone wanting to know if he's getting a desk  
9 appearance ticket.

10 Q. And the sergeant was surprised, am I correct, because he  
11 was telling you you should be giving a desk appearance ticket,  
12 right?

13 MS. LONERGAN: Objection, your Honor.

14 A. No.

15 THE COURT: Sustained. Rephrase it, please.

16 Q. Am I right that the real thing that was going on was the  
17 sergeant was telling you you should be giving a desk appearance  
18 ticket here, no?

19 MS. LONERGAN: Objection.

20 Q. You can answer.

21 A. No.

22 Q. But then he said -- you said to him: Well, I'll talk to  
23 the person on the phone. Right?

24 A. No.

25 Q. What did you say to him?

IB6TGRA6

Haley - Cross

1 A. Do you want me to?

2 Q. Okay. And he said: Go ahead. Right?

3 A. He said: Can you?

4 Q. And then you got on the phone and Inspector Grant was  
5 there, right?

6 A. Correct.

7 Q. And Inspector Grant asked why you weren't giving a desk  
8 appearance ticket, right?

9 A. No.

10 Q. What did Inspector Grant ask you?

11 A. Inquiring if he was getting one.

12 Q. He was asking isn't he getting a desk appearance ticket,  
13 right? Isn't Zangi getting a desk appearance ticket, right?

14 A. No.

15 Q. What was he saying?

16 A. He inquired to ask if he was getting one, not isn't he.

17 Q. Okay. Is he getting a desk appearance ticket, is that what  
18 he said?

19 A. I don't know the exact words, but he was inquiring. It  
20 wasn't an order or telling me to do anything.

21 Q. He didn't order you to do it, right?

22 A. No.

23 Q. But he told you you're supposed to give a desk appearance  
24 according to the patrol guide in this situation, right?

25 A. That's not what he told me.

IB6TGRA6

Haley - Cross

1 Q. Isn't that why everybody was surprised that you wouldn't  
2 give a desk appearance ticket is because you were required to  
3 by the patrol guide, right?

4 MS. LONERGAN: Objection.

5 THE COURT: Sustained.

6 Q. Let's look at the patrol guide. We could turn back to the  
7 first page. So if we look down to the middle of the page, it  
8 talks about the procedure, correct? Do you see where it says  
9 that?

10 A. Yes.

11 Q. And it says what when you are arresting a person charged  
12 with a misdemeanor or a violation, you will comply with  
13 appropriate arrest processing guidelines and you will bring  
14 them to the facility, right, or bring them to the precinct of  
15 arrest, right?

16 A. Correct. There's more to it, but yes.

17 Q. Then after that, desk officer will tell the prisoner that  
18 he or she may be issued a desk ticket -- a desk appearance  
19 ticket if qualified, right?

20 A. That's what this states, yes.

21 Q. Then number three, you're supposed to check the defendant's  
22 identity, right?

23 A. Yes.

24 Q. And then you have to take certain steps involving an  
25 investigation, number four, correct?

IB6TGRA6

Haley - Cross

1 A. Correct.

2 Q. If we turn to the next page, and there's a five-step  
3 eligibility process, correct?

4 A. Correct.

5 Q. And then the desk officer is supposed to check -- the steps  
6 five through nine are the desk officer checking to make sure  
7 that certain processes work, that the fingerprints come back,  
8 that the person does not have any history of not being around  
9 and various things like that, right, no warrants out on this  
10 person, correct?

11 A. That's the desk officer's job.

12 Q. And then if you turn to the next page, you look down at the  
13 bottom, and then it says you are supposed to make the desk --  
14 if all of those things work out all right, you are directed,  
15 you have to make a desk appearance ticket returnable to  
16 criminal court and deliver that -- then deliver that to the  
17 courts, right?

18 A. Correct.

19 Q. That's the process that is supposed to be done, right?

20 A. Correct.

21 Q. And then there are certain exceptions. Those are the  
22 general process, but there are certain exceptions for when you  
23 don't give a desk appearance ticket, right?

24 A. Correct.

25 Q. And those exceptions are set out on page 6 of 11, correct?

IB6TGRA6

Haley - Cross

1 A. Correct.

2 Q. And in this case, he did not have any open warrants, he had  
3 given -- he qualified in every other way for a desk appearance  
4 ticket, right?

5 A. According to the patrol guide.

6 Q. Yes. Well, he had no open warrants, right?

7 A. I don't believe so.

8 Q. And every other step that we have just talked about he  
9 qualified under, right?

10 A. According to the guide, yes.

11 Q. So then on page -- the government directed your attention  
12 to the exceptions to desk appearance. So if you look at page 6  
13 of 11 it says: A desk appearance ticket will not be issued in  
14 the following circumstances. Right?

15 A. Yes.

16 Q. And so these now are about to list the exceptions. Usually  
17 if it's a misdemeanor or a violation, the person has no open  
18 warrants and he's given ID and everything else has checked out,  
19 then you must give a desk appearance except in the following  
20 circumstances. Right?

21 A. According to the guide, yes.

22 Q. And so if we turn to the next page, if you look on Section  
23 M, which the government pointed out to you on direct  
24 examination, right?

25 A. Sorry?

IB6TGRA6

Haley - Cross

1 Q. That's the Section M right there, M like Mary, is  
2 aggravated unlicensed operation of a motor vehicle second  
3 degree, right?

4 A. Correct.

5 Q. And that's the section that the government pointed out to  
6 you on its direct examination of when you don't give a desk  
7 appearance ticket, right?

8 A. Correct.

9 Q. But that did not apply to the Zangi case, did it?

10 A. According to the guide, no.

11 Q. Right. And it didn't apply because Zangi was charged on a  
12 different section, right?

13 A. Subdivision.

14 Q. Different subdivision of the VTL 511, right?

15 A. Yes.

16 Q. There are three subdivisions, correct?

17 A. Correct.

18 Q. And this charge says that you do not give a DAT if it's  
19 Subdivision 2 or if it's Subdivision 3, right?

20 A. Correct.

21 Q. But he was charged under Subdivision 1, correct?

22 A. Correct.

23 Q. And so you were required to give a DAT, correct?

24 A. According to the guide.

25 Q. So according to the guide, a person like that should not

IB6TGRA6

Haley - Cross

1 have to spend the night in jail, right?

2 A. Correct.

3 Q. But you decided that you would not listen to your  
4 supervisor, the sergeant, you would not listen to the Inspector  
5 Jimmy Grant, and would put someone in jail for the night,  
6 right?

7 MS. LONERGAN: Objection. Misstates the testimony.

8 THE COURT: Counsel, rephrase please.

9 Q. Well, people were suggesting to you, saying to you: Why  
10 aren't you giving a DAT? Correct?

11 A. No.

12 Q. No, that wasn't what Jimmy Grant said on the phone?

13 A. It wasn't a suggestion.

14 Q. What was it?

15 A. An inquiry.

16 Q. Okay. And you say that you made the decision to put this  
17 person in jail overnight, even though it's against the patrol  
18 guide, based on something that district attorney's office had  
19 said?

20 A. That, and from my prior experience of what was behind the  
21 desk at my previous precinct.

22 Q. Let's talk about something that you say that the district  
23 attorney's office said. Did they say -- did someone from the  
24 district attorney's office say this directly to you?

25 A. I don't remember.

IB6TGRA6

Haley - Cross

1 Q. So what do you remember?

2 A. Hearing that two individuals or multiple individuals were  
3 involved in a motor vehicle accident and one had a suspended  
4 license, they were not to be issued a desk appearance ticket.

5 Q. When did you hear that?

6 A. Prior to this incident.

7 Q. From whom?

8 A. From someone from the district attorney's office.

9 Q. They told it directly to you?

10 A. I don't remember.

11 Q. Aren't you just making this up as an excuse for why you did  
12 something wrong?

13 MS. LONERGAN: Objection, your Honor.

14 THE COURT: Thank you. Sustained.

15 Q. You can't even remember the day when this supposed -- this  
16 conversation supposedly took place, right?

17 A. Which conversation?

18 Q. The conversation you supposedly had with someone from the  
19 DA's office, right?

20 MS. LONERGAN: Objection, your Honor.

21 THE COURT: Thank you. You can answer the question.

22 A. I'm sorry, say again?

23 Q. You don't even remember the day when this supposed  
24 conversation took place, right, the conversation you supposedly  
25 had with someone from the DA's office?

IB6TGRA6

Haley - Cross

1 A. I don't remember it being a conversation, as I stated.

2 Q. I thought you just said a minute ago that someone from the  
3 DA's office told you that.

4 A. You asked me if someone told me that. I don't remember  
5 that.

6 Q. What do you remember?

7 A. That I became aware of that by the Brooklyn District  
8 Attorney's Office of that.

9 Q. When you say you became aware, how did you become aware?

10 A. I don't remember.

11 Q. So you just have a vague idea in your mind that somehow you  
12 heard this, right, that this was the Brooklyn DA's position,  
13 right?

14 A. Absolutely not.

15 Q. What was it? What kind of idea do you have?

16 A. I don't understand what you're asking.

17 Q. You say there was also -- you testified that there was a  
18 piece of paper at your other precinct which you say had the  
19 rule that under 511.1(a) you were required to give -- you were  
20 not allowed to give a desk appearance ticket. That's your  
21 testimony, right?

22 A. I don't believe it was under that subdivision, it was under  
23 the VTL 511.

24 Q. Under 511 sub 2 and sub 3, right?

25 A. No.

IB6TGRA6

Haley - Cross

1 Q. Well, you say it just said in general under VTL 511 you  
2 were not allowed to give a desk appearance ticket, is that your  
3 testimony?

4 A. Ask that again, I'm sorry.

5 Q. You testified on direct examination that there was a piece  
6 of paper in your prior precinct which said that under these  
7 circumstances, the Zangi circumstances, you were not allowed to  
8 give a desk appearance ticket. That was your testimony on  
9 direct examination, right?

10 A. Correct.

11 Q. So what did that piece of paper say?

12 A. It stated that if someone failed to answer a summons, owed  
13 monetary value, child support, I'm not sure of the other  
14 choices, they were not to be issued a desk appearance ticket.

15 Q. So you understand that failure to issue a summons can turn  
16 a VTL sub 1 into a VTL sub 2 if it happens three times, if  
17 someone fails to answer three summonses it becomes a VTL sub 2,  
18 right? You know that.

19 A. It's three on three.

20 Q. It turns into sub 3?

21 A. No.

22 Q. Tell me what three on three means.

23 A. If means they have three summonses on three different  
24 dates, that would make them sub 2.

25 Q. Okay. And there was not three different summonses here,

IB6TGRA6

Haley - Cross

1 right?

2 A. I don't remember.

3 Q. Well, you want to look at the complaint that you swore out  
4 which says there was one failure to answer a summons?

5 A. No, under the complaint it would say 511.1. I don't  
6 remember how many times Mr. Zangi was suspended. That would be  
7 on his printout of his suspension.

8 Q. Let's go back to the complaint that is now in evidence, the  
9 criminal complaint.

10 THE COURT: Counsel, could I see you all briefly up  
11 here at sidebar.

12 (Continued on next page)

IB6TGRA6

Haley - Cross

1 (At sidebar)

2 THE COURT: Counsel, I'm looking at the clock. I  
3 think you made very effective use of your time so far with this  
4 witness, Ms. Necheles. I want to let the jury out at 3:30, as  
5 I said, and my preference would be to finish cross-examination  
6 if we can before I do that. Do you think that there's any  
7 prospect we would be able to?

8 MS. NECHELES: No, your Honor. This is a bad cop and  
9 we have to show that. She's a bad cop and we need to show  
10 that.

11 MS. LONERGAN: Your Honor, I need to point out that's  
12 ridiculous, but regardless, this officer is not available  
13 tomorrow. She has to attend a funeral. So if there is this  
14 massive amount of cross, it would have to be interrupted and  
15 the officer will have to come back because she's not available  
16 tomorrow.

17 MS. NECHELES: It's not massive, but about 15 minutes.  
18 I don't know if Mr. Meringolo --

19 MR. MERINGOLO: I don't know, you're doing a good job.  
20 I don't think I need it.

21 THE COURT: I don't think I could keep the jurors  
22 here, given my commitment to them, is the problem.

23 MS. NECHELES: We could stop now and go when she comes  
24 back, but I will ask that the government not speak to her.

25 THE COURT: I will provide an instruction after

IB6TGRA6

Haley - Cross

1 talking with the parties about this.

2 Counsel, is she unavailable later in the day tomorrow?  
3 Does it make a difference when --

4 MS. LONERGAN: Your Honor, my understanding is that  
5 the funeral is mid-morning, so she wouldn't be able to come  
6 here and then get to the funeral in the morning, and then that  
7 would make her unavailable essentially for the rest of the day.

8 MR. BELL: Is your Honor talking about the back end,  
9 about the afternoon?

10 THE COURT: Yes.

11 MS. RAVENER: We're breaking tomorrow at 2:00  
12 tomorrow, so I think that's the challenge.

13 THE COURT: Fine.

14 MS. RAVENER: And we want to be respectful of sure  
15 funeral obligations.

16 THE COURT: Unfortunately I apologize, I need to end  
17 on time to at least keep that part of my commitment to jurors.  
18 We can talk about what instructions I will provide her after I  
19 allow the jury to step out.

20 MS. NECHELES: Thank you.

21 MR. MERINGOLO: Thank you, Judge.

22 (In open court)

23 THE COURT: So ladies and gentlemen, I apologize for  
24 the interruption, it's almost 3:30 now and I told you that I  
25 would let you out every day no later than 3:30. I'm going to

IB6TGRA6

1 live up to any commitment on that front today, so I'm going to  
2 ask you to end for the day now.

3 During this window, as always, ladies and gentlemen,  
4 please don't talk about the case amongst yourselves, don't  
5 communicate about it with anyone else, and don't do any  
6 research about the case or anything or anyone involved in it.  
7 Please be here at 9:00 a.m. tomorrow. I will try to bring you  
8 in as promptly as possible so we can begin our work again  
9 early.

10 One comment about tomorrow's schedule. With  
11 apologies, we need to end the trial day a little earlier than I  
12 usually would like to. We have to end around 2:00, so we can  
13 plan to end tomorrow's testimony at 2:00. This is something  
14 that I had already contemplating when describing the schedule  
15 as a whole to you.

16 If you haven't had the opportunity to vote yet, please  
17 take the opportunity to do so. I will see you tomorrow  
18 morning. Thank you.

19 (Jury not present)

20 THE COURT: So first, counsel for the United States,  
21 I'm prepared to provide an instruction to the witness that she  
22 not discuss her testimony or any of the issues related to the  
23 case with anyone between now and next time she's on the stand.  
24 Any concerns regarding such an instruction?

25 MS. LONERGAN: Your Honor, we're aware of that and

IB6TGRA6

1 that's the procedure that we follow with the witness on  
2 cross-examination.

3 THE COURT: Thank you very much.

4 So Officer, first, thank you very much for being here  
5 today. I am ordering you not to discuss this case, your  
6 testimony today, or any of the issues related to your testimony  
7 between now and the next time you'll be with us. I understand  
8 that you have a competing commitment tomorrow, and I don't  
9 expect to call you back tomorrow. We won't interfere with  
10 that. So I expect that we'll see you back here on the  
11 following day, but it's very important that you not communicate  
12 with anyone about the subject matter of your testimony between  
13 now and then. Is that clear?

14 THE WITNESS: Yes, your Honor.

15 THE COURT: Thank you very much. You can step down.

16 MS. LONERGAN: Your Honor, may I make one caveat, if  
17 we have to get in touch with the officer for scheduling, it  
18 would be limited to logistics and scheduling.

19 THE COURT: That is a reasonable qualification. You  
20 can absolutely communicate with the United States or its  
21 representatives about scheduling for you to appear here. Thank  
22 you very much.

23 So counsel, as the officer is stepping down and  
24 walking out of the courtroom, let me ask if there's anything  
25 that we can take up now. I have a short list of things that

IB6TGRA6

1 have come up in the course of the day and I would be happy to  
2 discuss those. Counsel, is there anything that any of you  
3 would like to put onto the list for discussion now? As I say,  
4 I have a number of issues that are on my list, I'm not sure  
5 that we'll be able to resolve them all before we must recess  
6 for the day, but I would like to make sure that we are all  
7 working with the same universe of information.

8 I want to take the opportunity to hear more about the  
9 what I will describe as the friendship limiting instruction. I  
10 know Ms. Necheles was working on something. You have been in  
11 the midst of trying the case, so I don't anticipate you have  
12 had the opportunity to work on it more comprehensively.

13 Counsel for Mr. Reichberg and Mr. Grant, would you  
14 like to propose something to me in writing after we close  
15 today's trial date?

16 MS. NECHELES: Sure, your Honor, we'll do that. We'll  
17 send you something.

18 THE COURT: Thank you very much. I will take up that  
19 issue separately. I will review the government's proposal, I  
20 will review the defendant's proposal as well, and we'll try to  
21 to Court tomorrow with a proposal regarding that.

22 Thank you, United States, for your proposed language.  
23 I will comment on it tomorrow, and I look forward to discussing  
24 what language will ultimately be put in front of the jury, if  
25 any.

IB6TGRA6

1 MR. BELL: May I note, your Honor -- I didn't want to  
2 get into this before on the jury's time, but that you  
3 instruction incorporates at its tail end dual intent  
4 instruction that was given to the jury as recently as *United*  
5 *States v. Adam and Dean Skelos*. We just wanted to make sure  
6 that your Honor was aware of that precedent that says you can  
7 consider it.

8 THE COURT: Thank you very much. I appreciate that.  
9 One of the things that I am thinking about is how to address  
10 the reasonable concern that the United States has articulated  
11 without prejudging too much what the ultimate conclusion will  
12 be with our discussion of the ultimate charges. In any event,  
13 I look forward to seeing the defenses' submissions before I  
14 make a determination about what we should say.

15 That's one issue on my list of issues to discuss. I  
16 need to read you the decision that I prepared with respect to  
17 the Bruton issue that was taken up by the time that we spent  
18 talking about the rules.

19 Counsel for Mr. Reichberg, would you like to  
20 reconsider your position about bringing in the rules with  
21 respect to the DATs?

22 MS. NECHELES: Your Honor, as I said earlier, I  
23 thought the DAT rule was one that was different than the others  
24 because it went to whether Mr. Reichberg had actually caused  
25 somebody to do something wrong in terms of releasing somebody,

IB6TGRA6

1 so I thought it was different.

2 THE COURT: Thank you. So I think that we also should  
3 talk briefly about one issue that is raised in the United  
4 States' letter from late Thursday night/early Friday morning,  
5 and that relates to the sufficiency of the defense's expert  
6 disclosures. I don't believe that we can talk about all of the  
7 issues raised in the government's letter, but I want to spend a  
8 moment on that issue because it's one that may be one that we  
9 can work on between now and the time, if any, that these  
10 witnesses are called.

11 Counsel for the defense, is there anything that you  
12 can offer at this time regarding the government's arguments  
13 that the disclosures provided by you weren't adequate as to  
14 these experts?

15 MS. NECHELES: Your Honor, I have really not focused  
16 on this just because we have been so busy. I will take that up  
17 with Mr. Meringolo after court today and see if we can give  
18 further disclosure, whether there is something that we can lay  
19 out better.

20 THE COURT: Thank you, I appreciate that. I will ask  
21 you about it again tomorrow morning. To extent that the issue  
22 is one of disclosure, I think it's something that perhaps, with  
23 investment of time, we could mitigate concerns. In any event,  
24 I will raise this tomorrow.

25 Let me say a couple of words about our schedule both

IB6TGRA6

1 for lunches and our breaks. First, I am very conscientious of  
2 using our jury's time well. My philosophical belief is there  
3 are relatively few places where citizens come in contact with  
4 the functioning of our government, and I take seriously the  
5 duty to show them that we can act effectively.

6 It's for that reason that I care deeply about making  
7 sure that I abide by my commitments to the jury about when  
8 we're going to do things and the time it takes to do things. I  
9 think that we should be able to do our short lunch schedules.  
10 I think that the issue that we had today is very much a  
11 consequence of I will call it the proliferation of issues that  
12 have arisen late in the process of this trial, and my hope is  
13 that those will burn off over time and we'll be able to use the  
14 time in the morning effectively to resolve issues.

15 The other thing that I asked counsel is that you let  
16 me know if you think that we need more time for something. If  
17 you do and you let me know about it I could let the jury know  
18 about it and then I will not be disappointing them, instead I  
19 will be telling them what I expect to do. So please give me  
20 feedback, counsel, so I can give them proper guidance.

21 When I told the jury that I expect to start after a  
22 short recess in 15 minutes or so, my expectation is that we'll  
23 have the jury back and walking in in 15 minutes. So that  
24 unfortunately means for me and for you, counsel and parties,  
25 that you should be in your seats a minute or so before that so

IB6TGRA6

1 that they can come in after Anthony, Mr. Daniels, brings them  
2 in.

3 I also want to thank you, counsel, for being compliant  
4 with my general request not to make talking objections. I  
5 think that generally the parties did well with that. I think  
6 there are a couple of exceptions that came up during the course  
7 of today's conference. To the extent at any point, counsel,  
8 you want to say more to the Court or to a party, just ask for a  
9 short break or ask talk to about it out of earshot of the jury.  
10 I would rather do that than have the complicated back and forth  
11 that caused some laughter with the jury earlier today. So I  
12 would like to ask you, counsel, to adhere to my request that  
13 you avoid talking objections, and to the extent that there are  
14 issues that you can work out with your adversaries, that you do  
15 it at a low tone out of the hearing of the jury or with the  
16 Court at sidebar.

17 Is there anything else that we need to talk about now?  
18 Counsel for the government?

19 MS. LONERGAN: One moment, your Honor, if I may.

20 THE COURT: Please, take your time.

21 (Pause)

22 MR. BELL: Judge, before we continue, do you intend to  
23 loop around to the items that you articulated, the friendship  
24 instruction, the sufficiency issue, the other stuff that you  
25 mentioned?

IB6TGRA6

1 THE COURT: No. With respect to the friendship  
2 instruction, I'm going to give the defendants the opportunity  
3 to consider their issue and to submit something to me.

4 MR. BELL: Got it.

5 THE COURT: I will come back with a better sense of  
6 what the issues are later.

7 What was the second point that you raised?

8 MS. LONERGAN: One moment, your Honor.

9 THE COURT: Thank you.

10 MS. RAVENER: Your Honor, thanks for giving us a  
11 moment to confer.

12 THE COURT: It's not a problem.

13 MS. RAVENER: I want to make clear on the record that  
14 we notified the defendants yesterday that we may be calling  
15 sergeant -- excuse me, David Villanueva as soon as tomorrow,  
16 depending upon scheduling. And so I just want to ensure that  
17 to the extent there's any further issues with respect to the  
18 Lichtenstein evidence that the parties work together to vet  
19 that and raise any determinations before the Court promptly. I  
20 don't expect that it will come -- we will necessarily get to  
21 him tomorrow, given the pace that we took today, but I want to  
22 make sure we deal with this efficiently.

23 I will note that we did review your Honor's ruling,  
24 and it's the government's understanding that conversations that  
25 Mr. Villanueva had with defendant Grant about Shaya

IB6TGRA6

1 Lichtenstein and their mutual relationship with Shaya  
2 Lichtenstein and his dealings with the gun licensing division  
3 of the NYPD are admissible to give background to that  
4 relationship.

5 So again, the defense is in possession of the 3500 to  
6 date with respect to Mr. Villanueva, and we would request that  
7 to the extent that there's any issues that they foresee within  
8 the scope of that that they raise them with us. And if it is  
9 material that we plan to intentionally elicit, we will raise it  
10 with your Honor. I think that would help us all move forward  
11 efficiently without having any issues with the Court's ruling.

12 THE COURT: Thank you very much.

13 MS. NECHELES: Your Honor, I would like to say that is  
14 not our understanding of what the ruling was at all, but I will  
15 go back and look at it and have a discussion with them.

16 THE COURT: Please.

17 MS. NECHELES: Our problem, when the government says  
18 we are in possession of his 3500 material, it's massive. He  
19 testified at a trial. So I don't know what he's going to be  
20 saying here. It doesn't give me a clue of what they plan to  
21 elicit. So I thought it was rather narrow, just that your  
22 Honor recognized it was extremely prejudicial to Mr. Reichberg,  
23 who had initially granted a severance based on -- or suggested  
24 maybe a severance would be appropriate. I didn't mean to say  
25 granted severance, I withdraw that. That's not what happened.

IB6TGRA6

1 That it might be appropriate, but you recognized the severity  
2 of this. And I thought your Honor had made a rather narrow  
3 ruling that a small amount could come in.

4 THE COURT: Thank you. Please do confer on this  
5 overnight. Please come prepared to talk about it in the  
6 morning during that 9:00 a.m. to 9:15 window. I will review  
7 the record with respect to that issue as well.

8 I think in terms of our pacing generally, I encourage  
9 the parties to have the kind of conversations that the  
10 government has described and encourage you to bring to my  
11 attention, as much as possible, issues that you anticipate  
12 during the course of the day during that early morning window.  
13 My hope is that that will help us avoid sidebars of any length.  
14 I know they're all not always avoidable, but I think we can  
15 help make the process a bit more efficient.

16 MS. NECHELES: I feel like it could be more efficient  
17 if we knew what witnesses the government intends to call  
18 tomorrow and then Thursday as well.

19 THE COURT: Thank you. Counsel for the government?

20 MS. LONERGAN: Your Honor, given the much, much slower  
21 pace today than anticipated, we'll have to go back and regroup.

22 As the Court is aware from some of our comments, some  
23 witnesses have scheduling issues, some witnesses we thought we  
24 would got on today we did not. So as we did last night, we're  
25 happy to provide an email to defense counsel a little earlier

IB6TGRA6

1 than yesterday because we're ending earlier. But we can't yet,  
2 without looking at our schedule, figure out the four witnesses  
3 who didn't get on the stand today and all the people who are on  
4 our list for tomorrow exactly who will be called tomorrow or  
5 Thursday until we do that work.

6 THE COURT: Thank you. I understand the government  
7 will be providing that information to counsel for defense at  
8 some point during the course of today.

9 MS. LONERGAN: Of course, your Honor. It's not worth  
10 it for us to speculate now without -- it doesn't help for us to  
11 guess right now.

12 THE COURT: That's fine. Thank you.

13 Anything else that we need to talk about now?  
14 Otherwise I look forward to seeing the letter about the  
15 friendship issue from the defense. I'll plan to give you a  
16 short recitation of my logic regarding the Bruton issue that  
17 came up today. And other than that, I look forward to seeing  
18 you here in the morning promptly so that I can take the bench  
19 at 9:00.

20 Anything else that we should talk about now, counsel  
21 for the government?

22 MS. LONERGAN: No, your Honor.

23 THE COURT: Thank you. Counsel for Mr. Reichberg?

24 MS. NECHELES: No, your Honor.

25 THE COURT: Counsel for Mr. Grant?

IB6TGRA6

1 MR. MERINGOLO: No, your Honor.

2 THE COURT: Thank you all very much. This proceeding  
3 is adjourned. I will see you tomorrow morning.

4 (Adjourned to November 7, 2018, at 9:00 a.m.)

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24

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## INDEX OF EXAMINATION

Examination of:	Page
-----------------	------

TIMOTHY CHAPEL	
----------------	--

Direct By Mr. Bell . . . . .	150
------------------------------	-----

Cross By Ms. Necheles . . . . .	170
---------------------------------	-----

THERESA HALEY	
---------------	--

Direct By Ms. Lonergan . . . . .	186
----------------------------------	-----

Cross By Ms. Necheles . . . . .	223
---------------------------------	-----

## GOVERNMENT EXHIBITS

Exhibit No.	Received
-------------	----------

1615A . . . . .	164
-----------------	-----

1615 . . . . .	165
----------------	-----

1616, 1616A, 1618 and 1618A . . . . .	169
---------------------------------------	-----

1704 . . . . .	213
----------------	-----

710 . . . . .	218
---------------	-----

711 . . . . .	221
---------------	-----

## DEFENDANT EXHIBITS

Exhibit No.	Received
-------------	----------

JR9509 . . . . .	232
------------------	-----

JR9501 . . . . .	235
------------------	-----